UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of ( )
HOUSTON LIGHTING AND POWER COMPANY, ET AL. ( )
(Units 1 and 2) ( )

Docket Nos. 50-498 OL
50-499 OL

'83 MAR 21 A10:51

CITIZENS CONCERNED ABOUT NUCLEAR POWER (CCANP)
MOTION FOR NEW CONTENTION

I. INTRODUCTION

Two recent events raise new questions regarding the application of Houston Lighting and Power Company, et. al for a license to operate the South Texas Nuclear Project (STNP).

In December 1982, the Public Utility Commission of Texas (PUC) issued its Final Order on HL&P's rate increase request. See Exhibit 1 attached hereto. This Order concluded that HL&P had mismanaged the South Texas Nuclear Project. Based on this conclusion, the PUC indicated that HL&P may not be allowed to recover all of its investment in STNP. Id. at 3.

In January 1983, the City of Austin, a partner in STNP, filed suit against HL&P seeking a refund of all investment by Austin to date and assumption by HL&P of Austin's obligations for future payments (16% of the total) to STNP. See Exhibit 2 attached hereto.

These developments raise an issue which the Atomic Safety and Licensing Board should consider in an expedited phase of the operating license hearings. The issue is whether HL&P has the financial capacity to finish and operate STNP in a manner consistent with the protection of public health and safety.

This issue requires a new contention, which CCANP proposes as follows:

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In light of the current economic climate for nuclear investment generally, the current financial condition of HL&P, the recent actions of the Public Utility Commission of Texas in response to HL&P's 1982 rate increase request, and the potential economic consequences to HL&P resulting from the lawsuit filed by the City of Austin, does HL&P lack the financial qualifications to successfully complete and operate the South Texas Nuclear Project in a manner consistent with protection of the public health and safety?

II. DISCUSSION

The Nuclear Regulatory Commission (NRC) exempted electric utilities from financial qualifications review in order to reduce the effort and expense of the licensing process. It did not question the fact that "matters important to safety may be affected by financial qualifications," 47 Fed. Reg. 13,750 (1982), and, as a result, still requires financial qualifications review for non-utility applicants. See Id. at 13,753.

In reaching their decision to exempt electric utilities from financial inquiry, the NRC found that such utilities are financially stable, regulated monopolies; have a strong self interest in safety; and do not respond to financial pressures by corner-cutting on safety. Id. at 13,751.

Further, the Commission found that the NRC inspection process would detect any such corner-cutting which might take place. Id.

The Commission concluded that financial qualifications review did not contribute to the safety of utility operated nuclear power plants and, therefore, adopted the exemption rule.

The Commission, in its comments on the rule, however, noted that special circumstances might arise in individual licensing hearings which would warrant waiver of the exception under 10

C.F.R. Section 2.758. Id. at 13,752. The Commission also stated that it was not waiving its "residual power under the Atomic Energy Act to require additional information in individual cases as may be necessary for the Commission to determine whether an application should be granted or denied ...." Id.

10 C.F.R. Section 2.758 permits a licensing board to waive any rule when the application of the rule would not serve the purpose for which the rule was adopted. 10 C.F.R. Section 2.758 (1982). In this proceeding, the poor economic outlook for the nuclear industry generally, the financial condition of HL&P, the recent hostile regulatory actions towards HL&P by the Public Utility Commission of Texas, and the questions raised by the City of Austin's lawsuit against HL&P cast substantial doubt upon HL&P's financial ability to safety complete and operate STNP.

Additionally, the poor safety record to date at STNP indicates that the incentives and controls which the NRC feels are normally sufficient to ensure safety in the absence of financial pressures are not sufficient to do so here. The record in this proceeding demonstrates widespread failures by HL&P to implement its quality assurance program in compliance with NRC regulations. These violations took place in the absence of the tremendous financial pressures HL&P now faces.

Therefore, the presumption that utilities are generally financially qualified to safely construct and operate nuclear power plants is not warranted in HL&P's case.

Since 1978, when the Commission initiated the financial qualifications review rulemaking, the climate in which nuclear utilities must raise funds has worsened substantially. Lowered

bond ratings for utilities investing heavily in nuclear plants, higher interest rates, declining investor confidence, and other obstacles to raising capital for nuclear plants are now widespread in the investment community.

HL&P has just taken a major loss on a cancelled nuclear project, had its bond rating lowered twice in recent years, and faces future financial reverses based on actions of the PUC of Texas and of the City of Austin.

The PUC of Texas has found that HL&P has mismanaged STNP and has warned HL&P that it will not let ratepayers be charged for costs which are attributable to mismanagement. Exhibit 1 at 2, Exhibit 3 at 91.

The City of Austin has filed suit against HL&P alleging misrepresentation and mismanagement substantial enough to constitute a material failure of consideration to the participation agreement.* Exhibit 4 at 6.

It is likely that, as the extent of HL&P's mismanagement becomes clear in the record of this proceeding, in the litigation by the partners against Brown and Root, and in the Austin lawsuit, the PUC will take steps to exclude substantial amounts of the cost of STNP from HL&P's rate base, penalizing its stockholders and putting extreme financial pressure on management. Such a penalty was exacted for mismanagement in the cancellation of HL&P's Allens Creek nuclear project with the stockholders taking a $166 million loss. Exhibit 2 at 52.

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*A stockholder group has filed a resolution forcing a vote at the May 11, 1983 stockholder meeting on whether to shut down STNP for a complete independent review subject to the approval of the PUC.

Since the early seventies, construction costs for nuclear power plants have risen substantially, sometimes dramatically. As a result orders have stopped: no new orders have been placed since 1978, the year of the NRC decision which led to the adoption of the financial qualifications exemption. Public Service Company of New Hampshire, 7 NRC 1 (1978). Of the 15 orders placed between 1974 and 1978, 13 have been cancelled. More than 70 orders placed prior to 1974 have also been cancelled. "Red Ink Stains Atomic Age," Dollars and Sense, January 1983 at 12.

One of the reasons for these cancellations has been the increasing difficulties experienced by utilities in raising the massive amounts of capital necessary to build a nuclear plant. The credit rating companies have been lowering the ratings of utilities involved in nuclear project investment. Id. at 13. Almost one third of Merrill Lynch & Co.'s clients purposely avoid investing in anything connected with nuclear power. Id.

As a result of these conditions in the financial marketplace, utilities have become increasingly dependent upon ratepayer supplied capital. Companies in Pennsylvania, Mississippi, Arizona, Michigan, and Kansas are counting on raising their rates between 20% and 60%, if their new nuclear plants come on line. Id.

The cost of STNP was originally estimated at between $738 million and $990 million. The most recent Bechtel estimate is $3.495 billion. Unit 1 is now six and one half years behind schedule: Unit 2 is seven years behind schedule. HL&P testified at its latest rate hearing that, as a result of the increased

costs and delays, investors perceive HL&P as relatively more risky than the sample of stable industries used to establish a proper rate of return. Exhibit 2 at 17.

HL&P testified in the same hearing that its market-to-book ratio has declined to an average of 80% in the last two years, indicating that the company's financial integrity has become increasingly impaired. Id.

This impairment means that HL&P must pay investors higher returns and rely on PUC approved rate increases to meet its increased obligations.

However, the latest PUC actions indicate that the necessary rate increases may not be forthcoming. The PUC found that a 16.85% return on equity would be adequate to maintain HL&P's financial integrity under efficient management conditions. The PUC also found that HL&P had mismanaged its operations and reduced HL&P's return to 16.35% as a penalty for this mismanagement. Exhibit 1 at 2.

The Commission cited as an example of HL&P's mismanagement the handling of STNP, including the unreasonably optimistic construction schedule, the absence of prior nuclear project experience, and the "lack of project control systems sophisticated enough to monitor progress and successfully anticipate current and future problems on a project of such size and complexity." Exhibit 2 at 31.

In addition, the Commission cited HL&P's failure to test burn coal before purchasing it and the unusual handling of the Allens Creek Nuclear Project, including the use of an 80%

capacity factor in feasibility studies where NRC figures showed a 56% factor would be prudent. Exhibit 1 at 2.

As a further example of mismanagement, the Commission cited HL&P's unreasonable delay in cancelling the Allens Creek project after it became apparent the project was not feasible. Exhibit 2 at 52.

In addition to reducing HL&P's return on equity, the PUC required HL&P to write off $166 million of the cost of the Allens Creek Nuclear Project because the Commission found that this amount had been spent imprudently. Id.

Furthermore, the Commission rejected the hearing examiner's finding that a $1.7 billion ceiling should be set on HL&P's share of STNP: the Commissioners wanted to make it clear that HL&P would have to prove that any amount spent on STNP was reasonably spent before such amount would be included in the rate base. Exhibit 1 at 3.

The Commission also required HL&P to write off any amount it might be compelled to pay Brown and Root as a result of litigation between the partnership and Brown and Root. Exhibit 2 at 31. This ruling will become significant precedent as the City of Austin lawsuit moves toward judgment.

The Commission did not limit itself to financial sanctions against HL&P. The Commission found that HL&P's total system reserves, including purchased power, will fall below the minimum acceptable level in 1988, unless all of HL&P's current projects are completed on time. Id. at 28. Noting that HL&P had been overly optimistic in previous planning predictions, the Commission put HL&P on notice that more than normal customer

outages might result in service area reductions. Id.

Such a service area reduction would force HL&P to go back to the PUC for higher rates from their smaller service area or cancel generators now under construction, like STNP. To avoid these consequences, HL&P will be pressured to rush STNP to completion by taking unacceptable risks.

Finally, the Commission Chairman Rollins criticized the current direction of HL&P's management. He pointed out that the Board of Directors is clearly dominated by inside directors. Exhibit 3 at 92. He criticized the company for including representatives of its outside counsel and principal bank on the Board. He questioned the competence of the Board, noting that none of its outside directors are qualified to make substantial contributions to multi-billion dollar decisions. Id. at 93. Finally, the Chairman of the PUC, stated that, at a time when the company's principal problem is raising funds in the financial markets, none of its outside directors has any credibility on Wall Street. Id.

As as result of these PUC actions, HL&P is in a difficult position. The required write-off of $186 million imprudently spent on Allens Creek will prevent HL&P from satisfying its capital needs in the financial markets this year, setting back its construction program significantly. Exhibit 2 at 40.

The reduction in the return on equity, while not an immediate problem because it is only 0.5%, is a warning to HL&P that the Commission is not satisfied with HL&P's management to date and that investors, not ratepayers, will bear the costs of mismanagement.

The threat to reduce the service area should HL&P not complete its construction projects, including STNP, on time, puts additional pressure on management.

The recent suit by the City of Austin may compound HL&P's pressures in three ways. First, if Austin wins, HL&P will be faced with a judgment of at least $437 million dollars, plus whatever sums are expended by the City of Austin between now and final judgment, plus damages for loss of use of STNP to Austin, and the higher costs of covering Austin's power needs. Exhibit 4 at 7.

Second, HL&P's obligations with respect to STNP payments will be increased by Austin's 16% share. Id.

Third, successful litigation by Austin might well lead the other two partners, who are in almost exactly the same legal relationship to HL&P, to file similar suits. HL&P's potential liability from the three suits could easily surpass $1.5 billion and make HL&P completely responsible for raising the money needed to finish STNP.

In light of the PUC's order concerning losses to Brown and Root in the partner's lawsuit, it is doubtful that HL&P would be allowed to pass on litigation losses to ratepayers.

The findings of the courts in both the Brown and Root and Austin lawsuits as to the extent of HL&P's mismanagement will no doubt influence the PUC in its decision on whether or not to include the costs of STNP in HL&P's rate base. Should the courts find that Brown and Root's countersuit allegations of gross incompetence and mismanagement by HL&P or Austin's allegations of misrepresentation and mismanagement by HL&P are true, or even

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portant to remember that HL&P has
safety record: it is likely that

increased financial pressures will reinforce that pattern.

The financial pressures that HL&P faces are beyond the normal pressures encountered by the average utility. They are extreme pressures, the result of long-standing patterns of mismanagement. As such, they weigh heavily in all important management decisions.

Generally, the primary danger of such pressure is not that a firm will reduce costs by purposefully cutting corners on safety, but rather that in its zeal to return to efficient management, a company will discount safety considerations in the decision making process. Such discounting may take a form not easily detectable, such as picking the low bid of a marginally competent subcontractor, purchasing marginally adequate materials, doing less testing, and reducing commitment to vigorous quality assurance.

In HL&P's case, this danger is particularly acute since HL&P has already established a pattern of discounting safety considerations in less exigent circumstances. Apparently, HL&P does not take its self interest in safety as seriously as the NRC expected an electric utility would. 47 Fed. Reg. 13,750-1 (1982). Given HL&P's record to date, HL&P must conservatively be predicted to be more likely to commit safety violations as a result of financial pressure and more prone to such violations than another firm in a similar financial situation.

In the comment accompanying the rule change, the Commission said that existing NRC inspection procedures provide sufficient assurance of safety. Id. As noted above, however, the responses to financial pressure might well be a systematic lowering of

standards not readily detectable by the sporadic NRC inspection process.

In addition, the history of this plant indicates a lack of vigorous inspection by Region IV of the NRC. Many safety violations went undetected by the regional office for years. The allegations of inspector intimidation and shoddy construction were brought to the regional office in 1978. That office failed to confirm those allegations. Subsequently, a team primarily from outside the region did confirm the allegations leading to the Order to Show Cause in April 1980.

A second major failure by Region IV emerged when the Quadrex Report revealed a chaotic design and engineering process at STNP that Region IV apparently knew nothing about.

Finally, there is the performance of this regional office in respect to the Comanche Peak nuclear project, a performance that appears so flawed that the ASLB in the Comanche Peak licensing proceeding intends to inquire into the nature, scope, and competence of NRC investigations.

The NRC inspection process, at least in the case of STNP, is not a compensation for possible safety violations resulting from increased financial pressure.

The Commission also said that the historical response to financial problems has been postponement or cancellation of construction plans. Id. However, HL&P faces adverse PUC action, if it delays STNP. HL&P considers cancellation a "dumb idea" even in the face of multiple adverse conditions, any one of which could eliminate STNP as a viable investment. See Exhibit E.

More importantly for the decision on an operating license, after a plant begins operating, the costs of a shut down exceed the costs of construction delays. The immediate danger of not shutting a plant down when safety considerations indicate that a shut down is necessary exceeds the dangers of construction flaws.

Normally, utilities are not terribly pressured by financial considerations in these situations, since the cost of the plant has been included in their rate bases. However, it is quite likely that the full cost of STNP will not be included in HL&P's rate base, and that, as a result, HL&P will experience financial pressure well into the project's operating period.

The danger here is that HL&P will be tempted not to shut down STNP when it should be shut down. For example, HL&P might not be able to cover its power needs from other sources in case of a shut down. As already mentioned, HL&P's power reserves are low. Should it have to shut down STNP, HL&P might not be able to afford expensive purchases of power from outside sources, even if these sources were available. The resulting power shortage could force black outs or brown outs detrimental to public safety and health.

This kind of financial pressure also potentially compromises NRC enforcement efforts. The NRC should be able to shut down a plant whenever necessary. It should not have to balance the risks of continued operation against the risks of power shortages.

The NRC should not grant an operating license unless it is sure that the applicant can meet the foreseeable costs of shut downs, repairs, and modifications. Should HL&P not be able to bear these costs, the NRC might have to choose between allowing

unsafe operation or causing a financial chain reaction which could destroy HL&P. The NRC should never be placed in such a situation. The time to prevent such a situation from developing is during the license application inquiry and decision. The ALSB in this proceeding is fortunate in being able to address this question far earlier in the licensing proceeding than normal.

In conclusion, this Board should review HL&P's ability to safely construct and operate the South Texas Project. The extraordinary situation created by the deterioration of the general financial climate for nuclear-related investment, the current financial condition of HL&P, the actions of the PUC of Texas, and the litigation involving HL&P and STNP takes this case beyond the purpose of the NRC's generic exemption of utilities from financial qualifications review. The purpose of the exemption was to avoid the costs of unnecessary inquiry. In this proceeding, such inquiry is both necessary and important. The new contention offered by CCANP is, therefore, properly before this Board as a contention meriting inquiry and meriting an exception pursuant to 10 C.F.R. Section 2.758.

III. JUSTIFICATION FOR LATE FILING

A. There is good cause for lateness in filing an additional contention.

CCANP recognizes that the time for filing contentions expired in 1978. But CCANP contends that the deteriorating investment climate for nuclear projects, the decline in HL&P's financial condition, the PUC actions noted in this motion, and

the litigation mentioned changed CL&P's financial protects considerably over the time since filing contentions was first appropriate. There is, therefore, good cause for filing an additional contention at this time.

B. Assuming good cause for lateness is established, the balancing of the five factors in 10 C.F.R. Section 2.714(a)(i-v) determines whether the contentions are admitted.

According to previous rulings of the Commission, a late filed contention is first examined to see if there is good reason for lateness and then a balancing test is conducted of the five factors in 10 C.F.R. Section 2.714(a)(i-v) to determine if the contention is 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 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; and

(5) the extent to which the petitioner's participation will broaden the issues or delay the proceedings.

1. The additional contention is filed on time.

The events creating the basis for the new contention almost all occurred within the last four months. CCANP filed the additional contention within a reasonable time of petitioner's receipt of the information on which the contention is based.

particularly since gathering of various documents and researching the legal status of such a contention were also required. The first factor, therefore, favors admission.

2. Only admission of the new contention can protect Intervenor interests.

Although HL&P's financial outlook is also the subject matter of PUC hearings, only the Atomic Safety and Licensing Board has the power to impose the remedy that CCANP seeks: refusal to grant the application for an operating license. No other party in this proceeding has raised the financial qualifications issue. Only admission of this additional contention will protect CCANP's interest.

3. Absent the admission of this contention and CCANP's participation in litigating the contention, the record in this proceeding will be seriously incomplete.

The financial ability of HL&P to safely construct and operate STNP has been suddenly called into question by the recent events which form the basis of this contention. To ignore these recent developments would be to ignore significant new information of great importance to the decision on whether HL&P should continue to be the applicant for the STNP operating license. In view of the serious safety risks which could result, this issue should be addressed on the record in this proceeding in an expedited fashion.

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

As an admitted intervenor, CCANP is already recognized as representing an independent viewpoint from any other party. This factor is uniquely applicable to a petition requesting intervention status.

E. The admission of the new contention will broaden the issues in this proceeding but will not cause delay.

Admission of the financial qualifications contention would open a new area of inquiry for this proceeding. But the importance of this contention far outweighs the fact that an additional area of inquiry is now to be undertaken. The financial pressures set forth in this motion create a serious threat to the safe completion and operation of STNP.

Phase I of this proceeding encompassed all of the issues originally designated for expedited treatment. The record on past quality assurance and construction deficiencies is now completed. When the Partial Initial Decision is issued, the mandate of the Commission will be fulfilled.

Further expedited hearings are to be scheduled primarily because new matters warranting expedited treatment (Quadrex) arose subsequent to the initial decision to hold such hearings.

The current schedule of construction calls for the first unit of STNP to go on line in 1987. Adding the financial qualifications contention to the expedited hearings will not result in any delay, should the Applicants ultimately receive a license.

The fifth element weighs in favor of admission.

A balancing of the four relevant factors in 10 C.F.R. Section 2.714(a)(i-v) favors the admission of all the new contentions.

IV. DISCOVERY AND FURTHER HEARINGS

Upon acceptance of this new contention, CCANP moves for a

ninety day discovery period.

CCANP further moves that no hearings be scheduled in Phase II until all discovery, including discovery on this new contention, is completed, so that the demands of the hearing process will not overlap with the demands of discovery.

After the discovery period is complete, the hearings would continue.

Respectfully submitted,

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Dated: March 18, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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CERTIFICATE OF SERVICE

I hereby certify that copies of CITIZENS CONCERNED ABOUT NUCLEAR POWER (CCANP) MOTION FOR NEW CONTENTION was served by deposit in the United States Mail, first class postage paid to the following individuals and entities on the 18 of March 1983.

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EXHIBIT 1

DOCKET NO. 4540

APPLICATION OF HOUSTON LIGHTING AND POWER COMPANY FOR A RATE INCREASE	PUBLIC UTILITY COMMISSION OF TEXAS

FINAL ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that after statutory notice was provided to the public and to interested parties, a hearing in the above styled cause was conducted by an examiner who issued a Report containing Findings of Fact and Conclusions of Law, which Report is adopted in part and modified in part, as follows:

The application of Houston Lighting and Power Company (HL&P) is hereby GRANTED in part and DENIED in part, as set out in the Examiner's Report, as amended on November 16, 1982, subject to the following modifications:

I. Revenue Related Modifications

A. The invested capital of HL&P shall be reduced by $2.8 million. HL&P had accrued this amount for a Liquid Metal Breeder Reactor Project which has since been terminated. This is cost free capital and should be deducted from invested capital.

B. The cost of equity shall be reduced by .5% to 16.35%. This is a penalty for poor management, and shall remain in effect until HL&P's next rate case, and is not subject to recovery at some future time.

C. The following Findings of Fact & Conclusions of Law shall be changed, as a result of the above modifications, as follows:

Page 68, - Finding of Fact No. 6,- should be changed to read:

6. HL&P's invested capital is valued at $3,951,544,000, as shown below:

(In Thousands of Dollars)

Plant in Service	$3,962,797
Accumulated Depreciation	797,665
Net Plant	$3,165,132
Construction Work In Progress	947,699
Property Held For Future Use	3,180
Nuclear Fuel	60,769
Working Cash Allowance	44,531
Materials and Supplies	42,257
Prepayments	3,267
Fuel Inventory	76,706
Less	
Deferred Taxes	330,228
Pre 1971 Investment Tax Credits	8,279
Customer Deposits	20,695
Property Insurance Reserve	8,120
Other Cost Free Capital	24,675
Total Invested Capital	$3,951,544

Page 68, - Finding of Fact No. 7, should read:

7. The rate base adjustments recommended by the examiner, including the additional adjustment of an increase to cost free capital of $2.8 million, which reduces invested capital by this same amount, and used in deriving Finding of Fact No. 6, are reasonable for the reasons stated in this Report.

Page 68 - Finding of Fact No. 9,-should read:

9. A balance of 34.625 percent net current cost and 65.375 percent net original cost is reasonable for the purpose of calculating the adjusted value of HL&P's invested capital. Using these percentages, the adjusted value of HL&P's invested capital is $4,938,387,000. See also, attached revised Exhibits I and II.

Page 69, Finding of Fact No. 11, should read:

11. For reasons set out in this Report, 16.85 percent return on common equity capital is reasonable for HL&P. An annual return of $499,435,000, which constitutes a 12.63 percent return on HL&P's invested capital, and a 10.11 percent return on the adjusted value of HL&P's invested capital, is fair and reasonable, is adequate under efficient management to allow HL&P to maintain its current credit rating and to attract the capital necessary for the proper discharge of its duties as a public utility, and is sufficient to insure confidence in the financial integrity of the company.

However, the return on equity set forth above is reasonable only under circumstances of efficient management. Because the evidence in this case establishes that HL&P has been imprudent in its management on many occassions in the past, such as its handling of STP, its purchase of coal without first test-burning it, its unusual handling of ACNP in this docket, its use of an 80% capacity factor in its studies on ACNP when NRC data showed a 56% capacity factor to be prudent , as well as other instances which are supported by the examiner and the record in this proceeding, HL&P should be penalized by lowering its return on common equity by .5% to 16.35%. Thus, a return of $489,991,000 in this docket is proper and reasonable. This penalty shall remain in effect until the company's next rate case, and is not subject to being recovered at some future time.

Page 70, Finding of Fact No. 24, should read:

24. HL&P's adjusted test period revenue deficiency is found to be $182.6 million, rather than the $336 million as stated by the company in its rate-filing schedules.

Page 71 - Conclusion of Law No. 3, should read:

3. HL&P proved that it is entitled to additional annual revenues of $182.6 million.

II. Modifications - South Texas Nuclear Project

A. The $1.7 billion ceiling placed on HL&P's share of the South Texas Nuclear Project shall be deleted, so as to avoid any implication that the Commission might be approving expenditures for STP to this level, or the implication that HL&P need not eventually prove that all dollars expended on STP over the years must be proved reasonable to the satisfaction of the Commission.

B. The following Findings of Fact and Conclusions of Law shall be changed, as a result of the modifications set forth directly above, as follows:

Page 69, Finding of Fact No. 16 should read:

The record evidence establishes that HL&P has mismanaged STP. It is clear that HL&P is responsible for the delays at STP and for not responding to problems at STP in a more timely fashion. HL&P has shown mismanagement, not only in its handling of STP, but in its purchase of coal without first test-burning it, its unusual handling of ACNP, and its use of an 80% capacity factor in its studies on ACNP when NRC data showed a 56% factor to be prudent, and various other instances which are supported by the Examiner's Report and the record herein.

Page 69, Finding of Fact No. 17 should read:

17. Protective measures having to do with the Court suit between HL&P and B&R should be adopted.

III. Modifications - Rate Design

A. The ratchet provision for Texas New Mexico Power Company shall be lowered to 75%.

B. The General Counsel's office shall institute an inquiry into the relationship between the firm rate for Dow relative to the firm rate for LOS-B customers. This inquiry shall be limited to the rates charged only to these customer classes, and shall be consolidated with the docket which will result from HL&P's filing of a tariff for interruptible power in conformance with the examiner's recommendations.

C. Findings of Fact should be changed, as a result of the modifications set forth directly above, as follows:

Page 70 - Finding of Fact No. 27 should read:

27. The record supports a change in TNP's ratchet to 75%; however, the record does not support TNP's theory that certain costs should not be allocated to TNP.

Page 70 - Finding of Fact No. 29, should read:

29. The record is inconclusive on whether Dow rates are discriminatory relative to LOS-B rates, and therefore an inquiry should be instituted to investigate the issue more fully. In the meantime, the rate design stipulated to in this case for Dow and LOS-R should be approved.

IV. Additional Language and Findings of Fact - Rate Design

A. The Examiner's Report shall be amended at page 55, to include the entire stipulation on rate design, as follows:

Page 55 - after Number 2, add:

"As to revenue assignment, the stipulation provided that:

3. The methodology for assignment of revenue from the customer classes provided by staff witness Kent Saathoff is also appropriate. Each rate class should be assigned revenue to move it one-half the way toward a relative rate of return of unity where possible. However, no class should receive more than approximately one and one-half or less than one-half times the system wide percentage increase in total revenue. The only exception should be the Public Utility class which should be assigned its cost based revenue."

B. Finding of Fact No. 26 shall be changed to read:

26. Staff's allocation methodology and methodology for assignment of revenue from the customer classes is appropriate in this docket for the reasons stated in this Report."

C. Finding of Fact No. 34 shall be added, as follows

34. HL&P's rate design for the residential class is reasonable.

V. Affiliated Fuel Costs - Modification

The examiner's recommendations shall be modified so that HL&P shall file a tariff and associated costs by December 20, 1982 for costs to be set for the period April 1, 1983, through June 30, 1983. The formula for UFI fuel

costs set forth in the Examiner's Report, and as modified by the examiner, shall remain in effect only until April 1, 1983.

VI. Treatment of Taxes Associated with Allen's Creek Nuclear Project

For purposes of clarification, the Commission hereby adopts the examiner's treatment of the tax benefits associated with the $166 million of expenditures disallowed for the Allen's Creek Nuclear Project (ACNP). This $166 million unrecoverable portion of ACNP expenditures will be written off for tax purposes and will result in tax savings to HL&P. These savings should properly inure to the benefit of the ratepayer as a credit to tax expense. The tax benefit should be spread over the ten-year amortization period adopted herein for ratemaking purposes. The examiner's tax calculation, which calls for HL&P to bear the burden of the $166 million disallowance, after taxes, is explicitly approved herein.

IT IS FURTHER ORDERED that:

1. HL&P shall report to this Commission within twelve months before the filing of a rate case in which it intends to include South Texas Nuclear Project in rate base.

2. HL&P shall report to the Commission within six months before implementation of any substantial changes associated with the STP project.

3. HL&P shall pass through to ratepayers any amounts the courts may award HL&P in its lawsuit against Brown and Root in HL&P's next rate case following such award.

4. Any amounts assessed against HL&P in its court suit, including expenses for the suit it has filed against Brown & Root, shall not be recovered in any manner from HL&P ratepayers.

5. HL&P is hereby advised that if, in the future, it incurs abnormal customer outages, this Commission will give serious consideration to ordering neighboring utilities to serve existing or new customers within HL&P's certificated service area.

6. HL&P shall pass through to ratepayers, in its annual rate filings, all recoveries associated with the Allen's Creek Nuclear Project, including all amounts for equipment sold, and costs avoided through negotiation of existing contracts, or other arrangements. These recoveries are to be used to reduce the unamortized balance of approximately $195 million. Thus, it is to be made clear that recoveries from salvage shall inure to

the benefit of customers and the balance yet to be amortized of $195 million shall be reduced by any such recoveries. However, any recoveries associated with equipment acquired, contracts made, or any other arrangements, which can be clearly shown to be related to the period January 1, 1980 to August 26, 1982, shall not be used to reduce the unamortized balance of $195 million. The method of allocation by which the amounts associated with ACNP and STP shall be refunded to each customer class shall be litigated in HL&P's next rate case.

7. Beginning with February 1983, billings, HL&P shall not list individual cost of service items, such as fuel, separately on customer bills.

8. HL&P shall file a tariff, and details of costs associated with its affiliated fuel costs, by December 20, 1982, for the purpose of setting fuel costs for affiliated interests for the period April 1, 1983 through June 30, 1983. The procedure shall repeat itself on a quarterly basis. The next tariff filing should then be filed on or before April 1, 1983 for the quarter beginning July 1, 1983. No affiliated costs shall be passed through automatically to HL&P ratepayers after April 1, 1983.

9. HL&P shall file a proposed interruptible tariff, as recommended in the Examiner's Report, within ninety (90) days of this Order. General Counsel shall file an inquiry into the relationship between the firm rate for Dow relative to the firm rate for LOS-B customers. This inquiry shall be limited to the rates changed only to these customer classes, and shall be consolidated with the docket which will result from the filing of a proposed interruptible tariff by HL&P.

10. HL&P shall file a revised tariff in accordance with the Opinion, Findings of Fact, and Conclusions of Law herein sufficient to generate revenues not greater than those prescribed in this Order. HL&P shall file a copy of its revised tariff on all parties of record at the same time that it is filed with the Commission. The parties shall have ten (10) days from the date of such filing to present their written objections to the revised tariff, if any, to the Commission staff for its review and consideration. The Commission staff shall have twenty (20) days from the date of such filing of the revised tariff to review it for approval or rejection. The tariff shall be deemed to be approved and shall become effective upon the expiration of twenty (20) days after filing, or sooner upon notification by the Commission Secretary. In the event of rejection, HL&P shall be notified and a copy sent to the intervening parties herein by the examiner, and HL&P shall have fifteen (15) additional days to file an amended tariff and the same procedure shall be repeated herein. The revised and approved rates shall be charged by HL&P for electricity consumed after the tariff approval date. This Order is deemed to be final

on the date of rendition. Approval of the tariff, for all purposes, shall be deemed to be final on the date of its effectiveness either by operation of this Order or by notification by the examiner, whichever occurs first. If the date of approval of tariff falls within HL&P's normal customer billing cycle, HL&P is authorized to prorate customer bills to charge customers for consumption each day of the month under the appropriate tariff in effect on that day of the month.

11. All motions, requests, applications, and requests for Findings of Fact and Conclusions of Law not expressly granted herein are denied for want of merit.

SIGNED AT AUSTIN, TEXAS, on this 6th day of December, 1982.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: H. Moak Rollins
H. MOAK ROLLINS

SIGNED: George M. Cowden
GEORGE M. COWDEN

SIGNED: T. G. Smith
T. G. SMITH

ATTEST:

Jacquelin D. Ulm For
RHONDA COLBERT RYAN
ACTING SECRETARY OF THE COMMISSION

tgb

Exhibit I

HOUSTON LIGHTING & POWER COMPANY--4540
REVENUE REQUIREMENT
(000's)

Description	Test Year Per Books	Company Adjustments	Company Test Year	Staff Adjustments	Staff* Test Year	City Adjustments	City Test Year	Examiner Adjustments	Examiner Test Year
Fuel	$1,673,251	$129,325	$ 1,802,576	$ 110,803	$ 1,913,379	$ 30,732	$ 1,833,308	$ 110,803	$ 1,913,379
Purchased Power	130,764	95,139	225,903	9,667	235,570	0	225,903	9,667	235,570
Operations and Maintenance	330,850	55,871	386,721	(84,540)	378,868	(7,260)	379,461	(83,590)	379,818
Extraordinary Amortization	3,044	91,112	94,156	(38,329)	55,827	(91,112)	3,044	(71,600)	22,556
Depreciation	117,376	16,257	133,633	0	133,634	(4,933)	128,700	0	133,634
Other Taxes	95,012	22,495	117,507	74,663	192,170	(2,409)	115,098	72,593	190,100
Franchise Fees	60,166	16,521	76,687	-	-	(2,621)	74,066	-	-
Interest on Customers Deposits	0	1,225	1,225	0	1,225	0	1,225	0	1,225
Federal Income Taxes	178,222	118,223	296,445	(19,132)	277,313	(30,673)	265,772	(43,263)	253,182
Return	354,694	165,305	519,999	(19,552)	500,447	(16,655)	503,344	(30,008)	*489,991
Revenue Requirement	$2,943,379	$711,473	$ 3,654,852	$ 33,581	$ 3,688,434	$(124,931)	$ 3,529,921	$ (35,397)	$ 3,619,456
Less									
Other Revenue	$ 74,218	$ 17,560	$ 91,778	$ (1,355)	$ 90,423	$ (2,621)	$ 89,157	$ (2,850)	$ 88,928
Fuel Revenues	1,779,830	204,175	1,984,005	120,470	2,104,475	30,732	2,014,737	$ 120,470	$ 2,104,475
Base Rate Revenue	$1,089,331	$489,738	$ 1,579,069	$ (85,534)	$ 1,493,536	$(153,042)	$ 1,426,027	$ 153,017)	$ 1,426,053
Less Test Period Base Rate Revenue Adjusted			$ (1,243,371)		$ (1,243,371)	$ (1,095)	$ (1,244,466)		$(1,243,371)
Base Rate Revenue Deficiency			$ 335,698 **********		$ 250,165 **********	$(154,137)	$ 181,561 **********		$ 182,682 **********

* Based on Staff Ex. No. 17, revised downward after hearing

Exhibit I

EXHIBIT 2

DOCKET NO. 4540

APPLICATION OF HOUSTON LIGHTING AND POWER COMPANY FOR A RATE INCREASE	PUBLIC UTILITY COMMISSION OF TEXAS

Examiner's Report

I. Procedural History

On June 16, 1982, Houston Lighting and Power Company (HL&P), filed an application to change rates in the unincorporated areas it serves, effective July 22, 1982. The proposed changes are expected to result in a system-wide annual base revenue increase of $336 million, or approximately 10.0 percent of the adjusted total operating revenues for the test year ending March 31, 1982. All classes of customers are affected by the proposed rate change.

A prehearing conference was held on Friday, July 2, 1982, at which time the tariff changes were suspended for the 120 day statutory suspension period, and intervenor status was granted to the following parties:

Texas Industrial Energy Consumers (TIEC)
Texas-New Mexico Power Company (TNP)
Greater Houston Hospital Council (GHHC)
Dow Chemical Company (DOW)
St. Regis Paper Company (St. Regis)
City of Houston (Cities)
Dickinson Independent School District (District)
Committee for Consumer Rate Relief (CCRR)
City of Baytown (Cities)
Diamond Shamrock (DS)
United States Steel Corporation (USS)
Houston Retail Merchant's Association (HRMA)
City of Pasadena (Cities)
City of Lake Jackson (Cities)
Coalition of Cities (Cities)
City of Freeport (Cities)
Department of Energy (DOE)
Mockingbird Alliance
Dr. John Doherty

A procedural schedule was agreed upon and a hearing date set for August 30, 1982. A prehearing conference was held on August 26, 1982. As a result of this conference, several issues in this case were resolved through stipulations. These stipulations will be explained in this Report where appropriate. The hearing was rescheduled to begin September 2, 1982, to give parties time to revise their testimony after HL&P formally announced cancellation of its Allen's Creek Plant Unit No. 1, at the August 26, 1982, prehearing conference. The hearing continued until September 16, 1982; initial briefs were filed October 1; and reply briefs were filed October 8, 1982.

On August 30, 1982, a hearing was held for the purpose of hearing protestant's comments in this case. Numerous protestants appeared. The major complaint concerned bills for electricity which the customers felt were beyond their ability to pay;

Dr. Sherwin noted that the financial integrity test relates to allowing utilities levels of earnings that permit the achievement of appropriate market-to-book ratios, so that the sale of new equity does not impair the previously committed capital. He stated that if the market price of a utility stock remains below book value for a long period of time, it constitutes prima facie evidence of the inadequacy of earnings and the impairment of capital. Dr. Sherwin felt that an appropriate target market-to-book ratio is that achieved by industrials of similar risk to utilities, which have averaged 100-120 percent in the three- and five-year periods ending 1981. According to Dr. Sherwin, HII has not been able to maintain its financial integrity since 1977 because the market price of its stock has been below book value in every quarter, with one exception, for more than four years. He felt that the company's integrity had not only been impaired, but the degree of impairment had increased recently, as indicated by the decline in the market-to-book ratio to an average of 80 percent in the last two years.

Dr. Sherwin also undertook an analysis of the relation between returns and market-to-book ratios, comparing HII and selected samples of industrials. This analysis showed that investors perceive HII as relatively more risky than the selected sample of industrials. Dr. Sherwin blamed the perception of more risk on the delay in the completion of South Texas Nuclear Project, HL&P's declining reserve margin, and the high level of construction expenditures which would be necessary in the future to meet HL&P's needs. Because of this higher perception of risk, Dr. Sherwin testified that it follows that the required return to acheive a similar market-to-book ratio lies above the 15.75-16.75 percent returns suggested by the comparable earnings test. According to him, the relatively higher risks call for an upward adjustment of approximately 1.0 percent to the results of the comparable earnings test.

The discount cash flow technique seeks to infer investor capitalization rates from stock market data by reference to dividend yield and prospective growth in dividends and is generally represented by the following formula:

$$k = \frac{D_1 + g}{P_0}$$

For price, Dr. Sherwin used the highest price in the fifty-two weeks ended May 20, 1982, or $21.75. The dividend was calculated at $2.16, the current dividend rate. Dr. Sherwin projected the 1982-83 yield for HII in the range of 10.0-11.0 percent.

To estimate the growth rate, Dr. Sherwin reviewed annual growth rates in HII's earnings, dividends and book values, which showed wide fluctuations from one year to the next; he concluded these rates permitted no reasonable inference as to investor expectations. Compound ten-year dividend growth rates, computed on the basis of least squares for successive periods, show a distinct upward trend, from 7.1 to 8.9 percent. The growth rates in book value show a declining trend from 8.2 to 6.9 percent. Dr. Sherwin concluded that a longer-term growth rate for HII's total operations is in the range of 7-7.5 percent, but that the growth rate for utility operations is approximately 6.5 percent.

margin in 1988 is due to the expiration of the existing firm purchased power contracts. (See Exhibit IV, attached, which depicts these reserve margins.)

Historically, the minimum acceptable reserve margin throughout the region designated as the Electric Reliability Council of Texas (ERCOT), of which HL&P is a member, has been 15 percent. As already noted, HL&P's expected reserves will fall below the stated minimum reserve level in 1988. Implicit in even this low reserve level are the assumptions that HL&P will keep its construction program on schedule, be successful in its load management program and conservation efforts, and attract new interruptible loads and co-generation participation.

Dr. Guy also testified that purchased power is an important part of the corporate plan in the 1980's. Exhibit IV and Exhibit V, attached, show the impact of purchased power on system reserves. For example, in 1985, purchased power will make up over 68 percent of the total reserve capacity of 16.2 percent.

Even with the timely completion of HL&P's construction schedule, and the success of other programs previously mentioned, this utility will still have reserve margins which remain close to the minimum set by ERCOT.

The examiner believes that while HL&P's service is adequate at the present time, the quality of service and reliability could diminish to unacceptable levels in the near future if even one of HL&P's plans falls behind schedule. It is certainly possible that this may happen. For example, HL&P expects to shave its peak by 1200 MW in less that ten years; yet currently, only 80 MW, or approximately .07 percent of load, has been shaved. As is set forth in more detail in the examiner's discussions on the Allen's Creek and South Texas Nuclear Projects, the record in this docket indicates that HL&P may have been overly optimistic in previous future planning predictions. The examiner does not consider this a sign of mismanagement per se, but does believe that based on the record developed in this case concerning the history of STP, the coal-burning problem at Parish 8, the Allen's Creek cancellation, and the fact that HL&P has lost both its interruptible customers, this Commission should exercise caution in accepting at face value the company's predictions.

Therefore, the examiner recommends adoption of staff's proposal that HL&P be put on notice that if more than normal customer outages are experienced, serious consideration will be given to ordering neighboring utilities to serve existing or new customers within HL&P's certificated service area, and decertificating HL&P to those areas.

importantly, Ms. Blumenthal testified that these reports reveal that HL&P took no action to correct the problems which were found.

A delay of nine months from December 1, 1981 to August 31, 1982 also occurred. The cause of such delay was HL&P's removal of B&R as architect/engineer (A/E) and B&R's withdrawal as constructor. According to Mr. Goldberg, HL&P had to relieve B&R of its position as A/E because B&R could not "bring together talent fast enough to make this job (STP) move at a rate that we felt we could afford." While Ms. Blumenthal did not challenge the decision to relieve B&R, she testified that the B&R termination could have been avoided (1) if HL&P had exercised better judgment in 1973, or, (2) if HL&P had exercised better judgment between 1975 and 1980. According to her, HL&P should have realized in 1973 that the combination of its inexperience and B&R's inexperience as an A/E would lead to the problems which it encountered from 1975 to 1982. Furthermore, between 1975 and 1980, HL&P should have realized that it needed to exert more control over B&R, which according to her, it failed to do.

Based upon this evidence of alleged mismanagement and the recognition that current ratepayers are paying for such mismanagement by inclusion of CWIP in rate base, Ms. Blumenthal urged that STP warranted special treatment in this case; therefore, a penalty/reward system for HL&P's management at STP was suggested. Details of these recommendations have been set out above.

C. CCRR

CCRR contended that all of the problems at STP were caused by a simple fact situation, as follows: a utility company with an inexperienced and undermanned nuclear engineering staff hired an inexperienced architect-engineer to construct a large, complex nuclear generating station in record time. In order to obtain experience by building STP, the contractor (B&R) made representations regarding duration and cost of plant construction which it could not realistically fulfill, and which the project manager (HL&P) was too ill-informed to recognize as unreasonable until four years into construction and the expenditure of $2 billion.

CCRR also alleged that HL&P did not make substantial efforts to control and manage the project until 1978, when the South Texas Project Task Force was formed. The efforts of this task force culminated in the 1979 Baseline Study which was a comprehensive project status review and systematic effort to reforecast project cost and construction duration. However, CCRR found fault with the fact that this study did not begin until after two years of what it characterized as virtually unmonitored construction activity. Further, CCRR alleges that this fact accounts for HL&P's ignorance of the situation until 1978, at which time they discovered that actually less than 10 percent of the required design work had been completed prior to construction, instead of the 60 percent reported by the contractor. A comprehensive engineering assessment by the Company did not take place until the Quadrex Report was commissioned in 1980 by Dr. Goldberg, five years after initiation of construction.

The record which the company must develop to present to this Commission in the event of any future cost overruns should cause it to pay much closer attention to problems of any nature at the project. HL&P's management capability at STP will be directly tied to its ability to include in rate base in the late 1980's all the costs it incurs in constructing STP.

Furthermore, placing the burden on HL&P to come forth with the proof on issues of cost overruns and delays means that staff and intervenors will not have to undertake what this examiner considers to be an almost impossible task at present, or six years from now, of sorting out all the problems with this project for the years 1975-1989. Another benefit of this scheme is that staff and intervenors will be able to concentrate on allegations of mismanagement for the years 1975-81 when the plant goes on line. As already mentioned, the lawsuit on this matter may have resolved the issue of blame by that time. At the very least, it will provide a great deal of information not available at this juncture.

The examiner also suggests that HL&P inform the Commission, and all interested parties, twelve months in advance of its intention to request rate base treatment for the first and second units at STP.

It is suggested, as well, that the company inform the Commission and all interested parties of any major changes contemplated in this project, at least six months in advance of any planned implementation date. For example, the Bechtel forecast showed that deferral of Unit 2 at STP for five years would cost $1.284 billion. Cancelling STP Unit 2 in September 1982 would cost $368 million.

HL&P should also be ordered to pass through to its ratepayers any amount the courts may award HL&P in its lawsuit against B&R. In this regard, HL&P should present separate schedules in its annual rate case filings showing the costs associated with this lawsuit and any recoveries.

Also, the Commission should not allow any amounts the courts may require HL&P to pay B&R to be recovered from HL&P's ratepayers either through inclusion in the cost of service or through inclusion in Account 107 as a cost of the project.

The record indicates that HL&P's ratepayers have paid approximately $111.8 million in return alone due to the inclusion of some or all of STP in CWIP over the years. This figure does not include any amounts which may have been paid prior to the time this Commission took jurisdiction over HL&P's rates. The examiner agrees with the Cities that in light of burdgeoning cost to ratepayers, there should be some assurance that these units will ultimately become used and useful in providing service at the lowest cost possible.

HL&P continually refers to the challenge of the future faced by the company, this Commission, and presumably, its ratepayers. The examiner agrees that this challenge

As a result of its studies on ACNP, HL&P decided to accelerate the inservice dates for Limestone and Malakoff units by one year because without the acceleration of the construction of these units, and under the assumption that the in-service dates for the South Texas Nuclear Project would be delayed to 1987 and 1989, HL&P generating reserves would fall to approximately 10 percent for 1986 and 1988. If the decision was made to cancel the Allens Creek Nuclear Project, the company could allocate its financing capability to accelerate the in-service dates of the Limestone and Malakoff units and to maximize capability during the 1980's.

Mr. R. S. Letbetter testified concerning the effect of termination of ACNP without appropriate rate relief. According to him, if HL&P were to terminate ACNP without being granted rate relief to recover its investment in the project, its investment would have to be written off against income. This would result in an after-tax charge against income in excess of $200 million. Mr. Letbetter stated that these actions would prohibit HL&P from obtaining capital from the sale of mortgage bonds or preferred stock for a period of up to twelve months because the provisions of the Mortgage and Charter could not be met. This would effectively shut down HL&P's construction program and lead to significantly greater costs of the units under construction.

Mr. Letbetter also explained that there were practical limitations to the amounts of external funds which can be raised. Common stock of $200 million and preferred stock of $100 million are the maximum amounts that HL&P could expect to sell annually over the next several years. Internally generated funds and sales of debt would have to account for the remainder of the funds needed. The following chart depicts the capital requirements of the construction program including and excluding ACNP for the period 1983 - 1987, the time frame most critical in terms of capital requirements.

	Construction Program incl. Allens Creek ($ millions)	Construction Program excl. Allens Creek ($ millions)
1983	$1,320	$1,136
1984	1,514	1,300
1985	1,551	1,316
1986	1,740	1,496
1987	1,593	1,471
Total	$7,718	$6,719

By removing ACNP from the construction program, approximately $1 billion of capital requirements would be eliminated. The financing plan for the construction program without ACNP still entails considerable difficulty, but, Mr. Letbetter felt, is one which may be achievable if adequate rate relief is granted to maintain HL&P's financial integrity.

The following table depicts the additional funds necessary to finance the construction program with ACNP versus one excluding the project. The amount of funds from internal sources is assumed to be 40 percent of the total additional requirements.

Also, while a different fixed cost factor may not be necessary for nuclear plants, it is difficult to understand why HL&P did not include costs in its studies such as insurance expense and interim capital replacement, which are costs which are obviously higher for nuclear plants than for coal.

Also, operating experience through 1976 indicated that HL&P did overstate O&M costs for nuclear plants to some degree. While one might quibble with Mr. Smith-Johannsen over the actual underestimation of nuclear costs by HL&P associated with ACNP, all of the factors he mentioned, taken together, indicate that HL&P ignored historical data available at the time these studies were done and ignored some of the more obvious risks associated with nuclear plants in its studies. The result: the studies were skewed in favor of the ACNP option.

However, these studies are not the only evidence of HL&P's imprudency associated with ACNP. When one takes into account the fact that from 1976 to 1979 capital costs for nuclear plants continued to escalate more rapidly than those for coal, the safety regulations promulgated by the NRC increased substantially as a result of the Three Mile Island incident, and ACNP became stalled at the NRC in 1979 because of intervention at the construction permit hearing, the delay in cancellation can be characterized as clearly imprudent.* Finally, HL&P's difficulties with STP should have been factored into its studies on ACNP.

Staff witness Lee, who has followed this project over the years, also testified on ACNP. He indicated he was not surprised that ACNP had been cancelled and had in the past doubted whether the project would ever be a reality when HL&P began having problems at the NRC.

The examiner will not second-guess HL&P on its reactivation of ACNP in 1976, but agrees with CCRR that, based on all the circumstances mentioned above, the plant should have been cancelled sometime during late 1979-early 1980. Therefore, expenses incurred from approximately January 1, 1980 to August 26, 1982, of approximately $160 million, should be removed from the total amount to be amortized of $361.1 million. The $361.1 million is staff's total to be amortized after a minor adjustment to HL&P's total of $362 million. Thus, a total of approximately $200 million should be amortized on a straight-line basis over ten years. The ten year straight-line method more fairly assesses the burden of this plant on HL&P ratepayers. HL&P's method is based on a method of accelerated depreciation which has been consistently rejected by this Commission. Furthermore, it is designed to produce cash flows to achieve financial integrity measures which the examiner believes to be beyond those needed to maintain HL&P's bond rating.

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*Massive interventions occurred in 1979 at the NRC. The examiner agrees with HL&P that it need not have cancelled HL&P solely because of this. However, a serious evaluation of whether the project would ever get off the ground was called for in 1979 before another $160 million was poured into the project.

don't know where all this will be in 1988. I hope some of us will still be involved in this business.

Open the envelope in 1988, look back. And to the extent you might have been wrong on any one of those estimates, look back and say: Were you imprudent or were you simply relying on the best judgment you could make at the time on the best expert opinion you could bring to bear on the problem? And that, gentlemen, is the difference between what I think HL&P has done and what the Examiner has concluded that they do.

CHAIRMAN ROLLINS: Thank you.

Mr. Cowden, do you have other questions of any of these parties?

COMMISSIONER COWDEN: No, sir.

CHAIRMAN ROLLINS: Commissioner Smith?

COMMISSIONER SMITH: No, sir.

CHAIRMAN ROLLINS: Mr. Cowden, do you wish to make your remarks and recommendations?

COMMISSIONER COWDEN: Mr. Chairman, I want to join those who have commended the Examiner for the job she did on this case. I think she did very, very well in a very, very difficult case. And I commend her for the job that she did.

I also want to commend the lawyers who have

argued here this morning. And I think Mr. Webb is truly able and eloquent, and I think he represents his client very, very well.

I think it is important for those who are not lawyers who are here who are interested to recognize that the job of the lawyer is to represent his client's position and to argue those points which are most in his or her client's favor. And I understand that. I recognize it. And I think generally speaking that we have pretty good representation before this commission.

Mr. Chairman, I am going to recommend the adoption of the Examiner's Report with several changes. I told Ms. Williams this morning that my changes should not be considered by her to be personal. And certainly I think that she accepts that, that it is our responsibility ultimately to make a determination, that our Staff makes recommendations and the Commission makes the final judgment, exercises final judgment.

I do not think that the Commission is in a position at this time to make a proper -- to make a determination on a proper amount for a ceiling to be placed on the expenditures of the South Texas Project. It does have some appeal. But I think that the $1.7 million ceiling placed on HL&P's share of the South

Texas Project should be removed from the case.

My concern is that, by implication, HL&P might believe that the Commission is approving expenditures for that level and would, in turn, only need to prove up any expenditures in excess of that amount. When HL&P is prepared to put South Texas into service -- and I truly believe and hope that that will come about -- and comes before the Commission for inclusion -- for its inclusion in the rate base, the Company, I think, would then have the burden of proof on the entire amount expended. And I think they recognize that and accept it. And it would be inappropriate for us at this time, Mr. Chairman, and Mr. Smith, to impliedly approve an amount at this time.

The Examiner provides for a change in the Company's method of determining fuel cost for fuel which comes through UFI. She requires the Company to prepare and file a tariff no later than March 30, 1983, for the quarter which begins July 1, '83, through September 30.

I recommend that these dates be moved forward about three months and that the first date, March the 30th, '83, be moved to December the 20th, 1982, and that this change in calculation of fuel through UFI being effective April the 1st, '83 -- for

the quarter beginning April the 1st, '83, through June 30th, '83.

For clarification, Paragraph 8 of the Order itself should be changed to read:

"HL&P shall file a tariff and details of costs associated with its affiliated fuel cost, no later than 20 days after rendition of the Final Order in this docket, for the purpose of setting full cost for affiliated interest for the period April 1, '83, through June 30, 1983.

"The procedure shall repeat itself. The next tariff filing should be filed on or before April 1, '83, for the quarter beginning July 1, '83.

"No affiliated costs shall be passed through automatically to HL&P ratepayers after April 1, 1983."

As to the handling of Allen's Creek, I recommend the Examiner's result, which requires $166 million be removed from the amount to be amortized, the remaining approximate 195 million to be amortized straight line over ten years.

I think the Report is clear, but if not, I want to make it clear that any amounts received from salvage or in negotiation of termination of outstanding

contracts or other arrangements would be used to reduce the outstanding unamortized portion of the approximate $195 million. And when I say "unamortized," I mean the balance which remains to be amortized which has not yet been amortized at the time of any receipt from any funds from salvage or negotiation of contracts.

I suggest the Order be changed to make clear the benefits of such salvage shall inure to the benefit of the customers and that the balance to be amortized should be reduced.

CHAIRMAN ROLLINS: Mr. Cowden, with regard to that recommendation --

COMMISSIONER COWDEN: Yes, sir.

CHAIRMAN ROLLINS: -- part of the exceptions noted that there was to be no recovery of funds expended after January 1980. Would the implication follow that any recovery of funds from equipment ordered or payments made after January 1, 1980, be excluded from this application to the amortized funds?

COMMISSIONER COWDEN: I didn't follow your question, Mr. Chairman. If you'll give it to me one more time.

CHAIRMAN ROLLINS: All right, sir. You're suggesting that any recovery of equipment

ordered -- from equipment ordered and subsequently salvaged or any settlements of contracts --

COMMISSIONER COWDEN: Yes, sir.

CHAIRMAN ROLLINS: -- be utilized to reduce the $195 million.

COMMISSIONER COWDEN: That's correct.

CHAIRMAN ROLLINS: $195 million relates to those funds expended prior to January of 1980.

COMMISSIONER COWDEN: That's correct.

CHAIRMAN ROLLINS: And those funds expended after January of 1980, 166 million, are not to be recovered. It seems to me that any salvage related to commitments made after January 1, 1980, should not be applied to the amortization.

COMMISSIONER COWDEN: I agree with that, and I'm sorry I didn't understand your question. But that is correct. That's correct.

CHAIRMAN ROLLINS: All right.

COMMISSIONER COWDEN: I think that's implicit in the recommendation I have tried to make.

CHAIRMAN ROLLINS: All right. Thank you.

COMMISSIONER COWDEN: The Examiner requires the tariff be filed relative to an interruptible rate and considered in a separate docket

with reference to Dow.

My recommendation is to expand that inquiry, and I would instruct, if my recommendation is adopted, to instruct the Staff to file an inquiry relative to the firm rate for Dow and the relationship between it and LOSB rate, both matters to be considered in a separate single docket, that the consideration in that docket be limited to Dow and the LOSB and then proceed to a final resolution of the questions raised in this docket, some of which the Examiner states cannot be evaluated to determine -- and I quote -- "difference or similarities between Dow and LOSB so as to justify an equal and relative rate of return or equal base rate revenue requirement for the two cases."

It may be that because of the multitude of issues considered otherwise, the relationships between Dow and HL&P and Dow and LOSB have not been developed to the extent that it should have been or that it could have been or that it might have been. The inquiry, if the recommendation is adopted, will pursue both of these relationships, Dow and its interruptible rate and Dow as to LOSB, and try for one time, finally, to settle the issue.

And let's dedicate the time, manpower necessary -- man and woman power; excuse me, ladies --

to try to get the issue settled.

CHAIRMAN ROLLINS: Do I understand that your instruction to the Staff is to open that inquiry to both interruptible rates and firm rates?

COMMISSIONER COWDEN: Yes, sir.

CHAIRMAN ROLLINS: For both the Dow contract and for LOSB class?

COMMISSIONER COWDEN: That is correct.

CHAIRMAN ROLLINS: All right.

COMMISSIONER COWDEN: I recommend that the Company be directed that individual cost of service items such as fuel shall not be listed separately on the customers' bills, beginning with the February billings.

The City of Houston and Coalition of Cities' Exception No. 2 is, I believe, good. Invested capital of HL&P should be reduced by 2.8 million in accordance with that exception.

Liquid metal breeder reactor project was terminated some years ago. The Company has accrued 2.8 million, which is, I believe, cost-free capital. It is my understanding that the expense of this annual amount was a stipulated item that would not be allowed. And I think that it's appropriate that, in accordance with that exception filed, that that cap be reduced by $2.8

$2.8 million.

In response to the cities, the City of Houston and the Coalition of Cities' Exception No. 6, I think we need to do some cleaning up at a point or two.

At Page 55, following Paragraph No. 2, I would add the following language:

"As to revenue assignment, the stipulation provided that,

"(3) The methodology for assignment of revenue from the customer classes provided by Staff witness Kent Saathoff is also appropriate. Each rate class should be assigned revenue to move it one-half the way toward relative rate of return of unity, where possible. However, no class should receive more than approximately one and one-half or less than one-half times the sytemwide percentage increase in total revenue. The only exception should be the public utility class, which should be assigned its cost based revenue."

And then we need to change, I think, Finding of Fact No. 26 to read -- and this would strike 26 and put this language in its place.

"Staff's allocation methodology and methodology for assignment of revenue from

the customer classes is appropriate in this docket for the reasons stated in this report."

And then we need to add probably, and I recommend addition of Finding of Fact No. 34, which would read:

"34. HL&P rate design for the Residential class is reasonable."

Mr. Chairman, based on the argument that we have heard this morning, I am going to recommend that the request by Texas-New Mexico be granted and that the ratchet be reduced from the 85 percent to 75 percent.

CHAIRMAN ROLLINS: If that recommendation is adopted, there would also need to be a change in Finding of Fact 27.

COMMISSIONER COWDEN: Well, all of these changes, Ms. Williams, that I am suggesting, there will be numerous changes. I think it will flow through and it will have to be redone. And I have not tried to track all of those through, but we'll need to change numerous Findings of Fact and certainly the Order and Conclusions of Law.

This report includes several statements relative to mismanagement on the part of the Company. The Examiner concludes there is no mismanagement or

insufficient evidence for her to conclude that there is mismanagement.

I disagree and am persuaded the conclusion is inconsistent with the very language of the Report itself. Her conclusion deals primarily with South Texas Nuclear Project: The matter of purchase of coal without first test-burning it, repeated delays in problems in the South Texas Project, the unusual and almost strange handling of Allen's Creek, consideration of an 80 percent capacity factor for Allen's Creek when the industry, according to the NRC, was experiencing a 50 percent factor of the same type of equipment to be used at Allen's Creek.

The Examiner discusses, and she said -- I quote -- a peculiar paranoia on the part of management, that its major decision will be criticized in the regulatory forums.

And she concludes by saying -- and this is a quote -- "This is not an indication of vigorous management. It is both imprudent and improper."

Without attempting to restate the many references to less than distinguished management decisions and judgments, suffice it to say the record carries with it and the Examiner's Report references many instances of what certainly must be considered as

matters of mismanagement.

Counsel for the Company argues in exceptions and, in fact, here today he has argued that at the time the decisions were made, they were reasonable and that it is unreasonable to look back now and second-guess management.

I submit the only test for good or poor management is by retrospective look. Surely management would have done differently had they had the foresight to anticipate what would result from some of the decisions which have been made. Repeatedly through the years, management has blamed someone else.

By what standard should management of a public utility be judged, Mr. Chairman? Were this company in a purely competitive, non-monopolistic, non-regulatory business, I dare say that many of its decisions might have by this time put it out of business.

In private discussions with management, I am aware that Dr. Rollins has and I personally, we both urge the broadening of the board of directors of this company in hopes of bringing some fresh approaches to the Company management. These suggestions have been met with very limited response.

Because of the reasons which I have

discussed and which I believe demonstrate poor management -- because I think the record and the Examiner's Report support it -- I am going to recommend that the return on equity be lowered from 16.85 to 16.35 percent, with this half percent reduction as a penalty for poor management, and shall remain in effect until the Company's next rate case.

And I would like to at this point state that when I say until the next rate case, it's not a matter of being able at some future date to go back and attempt to recover it, from my standpoint.

It is my intention, if the recommendation is adopted, that this be a signal, a signal to management, to its board of directors, and to its shareholders that this commission will not and cannot continue to condone the type of management that has gone on over the last several years in Houston Lighting & Power.

As indicated earlier, Mr. Chairman, I suggested several changes. And with the changes that I have suggested, I recommend the adoption of the Examiner's Report.

CHAIRMAN ROLLINS: Mr. Smith, do you have comments to make?

COMMISSIONER SMITH: No, other than to say that I support the recommendation.

CHAIRMAN ROLLINS: I would like to add my comments to the recommendation. First of all, let me say that I will support in its entirety the recommendation of Mr. Cowden.

I am very much concerned about the issue of management, and in particular about the input of management or input and control of management by the board of directors of this company. The board of directors of this company are clearly dominated by inside directors. Included as a nominal outside director is a representative of the firm that acts as counsel to this utility.

When you find a senior member of the outside counsel on the board of directors of a firm, that outside counsel has stepped beyond being an advisor to the corporation, and it has become a manager of that corporation. And I would urge that this company consider removing from its board of directors the representative of its outside counsel.

The same recommendation relates to the position of another nominal outside director, a senior officer of this company's principal commercial bank affiliate. The board of directors cannot be independent in its decisions with regard to financing; it cannot be independent with regard to its decisions

concerning legal matters when dominant members of its board of directors are its outside counsel and its principal banker.

The remaining outside members of the board of directors do not have sufficient experience in their own personal business to make substantial contributions to decisions related to multi-billion dollar operating budgets and multi-billion dollar construction programs.

This company by its very nature has a very substantial impact upon the future community life of the City of Houston. And within the City of Houston there reside the headquarters of numerous major corporations which do operate multi-billion dollar entities. This company needs to have some of that kind of community representation on its board of directors, from major corporations who operate multi-billion dollar construction budgets and who operate multi-billion dollar operating budgets. It does not now have any of that kind of outside input on its board of directors.

It does not have on its board of directors any outside director who has in its own name and in his own right and in his own corporate experience any credibility in Wall Street. And yet, this Company's principal problem for the next 10 or 20 years is going

to be the raising of funds in the public markets. And it does not get from its outside directors the kind of input which it needs with regard to those resources.

This company needs a major change in its management direction. And I would urge its present management, I would urge its present board of directors, and I would particularly urge its stockholders to take those actions which are necessary to make those changes.

There being no dissent to Mr. Cowden's recommendation, the Examiner's Report will be adopted with those corrections which have been noted, those modifications which have been noted.

We'll take a brief break and come back. And the next matter which we're going to hear will be Docket 4223.

(Brief recess)

CHAIRMAN ROLLINS: Let's resume our hearing.

The next item is Docket 4223, the appeal of Arbor Oaks, Incorporated, a water utility, from the ratemaking ordinances of the City of Houston. Once again, this case has been assigned to Mr. Cowden.

EXHIBIT 4

NO. 343,240

CITY OF AUSTIN,	I	IN THE DISTRICT COURT OF
V.	I	TRAVIS COUNTY, TEXAS
HOUSTON LIGHTING AND POWER COMPANY, AND HOUSTON INDUSTRIES, INC.	I	98 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE DISTRICT COURT:

NOW COMES the CITY OF AUSTIN, TEXAS, Plaintiff, complaining of HOUSTON LIGHTING AND POWER COMPANY and HOUSTON INDUSTRIES, INC., Defendants and seeks reformation of the South Texas Project Participation Agreement and other relief as set forth herein.

I.

Plaintiff, the City of Austin, Texas ("Austin"), is a municipal corporation incorporated under the laws of the State of Texas and its Home Rule Charter and located in Travis County. Austin is engaged in the business of producing and distributing electrical power in the Austin area. Austin is the owner of a 16% undivided interest in the South Texas Project ("STP"), a nuclear power plant under construction in Matagorda County, Texas, consisting of two proposed 1250-megawatt units.

Defendant, Houston Lighting and Power Company ("HLP"), is a corporation incorporated and existing under the laws of the State of Texas, having a place of business at 611 Walker Avenue, Houston, Texas where service of process can be made upon its Chairman and Chief Executive Officer, Don D. Jordan. HLP is engaged in the business of producing and distributing electric power within the State of Texas. HLP is the owner of a 30.8% undivided interest in STP.

Defendant, Houston Industries, Inc. ("Houston Industries"), is a corporation incorporated and existing under the laws of the State of Texas, having a place of business at 611 Walker Avenue, Houston, Texas where service can be made upon its Chairman and Chief Executive Officer, Don D. Jordan. Houston Industries owns all the outstanding shares of stock of HLP.

FILED

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Exhibits

M.S. Hertel

II.

In December, 1973, in the City of Austin, Travis County, Texas, Austin entered into a written agreement ("Participation Agreement") with HLP, Central Power and Light Company ("CPL") and The City of San Antonio, Texas, acting by and through the City Public Service Board ("CPSB"), to participate in the construction, ownership and operation of STP. Each entity has an undivided ownership interest in STP in proportion to its ownership interest. The Participation Agreement is attached as Exhibit A.

Under the Participation Agreement, HLP is designated Project Manager on behalf of the participants. With certain exceptions, HLP, as Project Manager, is to provide for and is responsible for the planning, construction and operation of STP in accordance with the Participation Agreement and project agreements.

III.

As part of HLP's duties as Project Manager, HLP entered into a written contract ("Brown & Root Contract") dated December 31, 1972, with Brown & Root whereby Brown & Root was to act as architect, engineer, constructor and construction manager for STP.

Under the Brown & Root Contract (attached as Exhibit B), Brown & Root was required, among other things, (a) to perform all engineering and design work necessary for STP including all technical services necessary to ensure design and completion of STP in accordance with applicable codes, and state, local and federal government regulations; (b) to formulate, establish and administer a quality assurance and quality control program to meet the requirements of 10 CFR 50, Appendix B; and (c) to perform construction and construction management services as requested by HLP as set forth in Exhibit B and the project documents.

IV.

When Austin entered into the Participation Agreement for STP in December, 1973, Brown & Root had been selected by HLP, as

Project Manager, as the architect, engineer, constructor and construction manager for STP and had commenced work thereon.

In December, 1973, HLP and Brown & Root represented and Austin in good faith believed that Brown & Root possessed or could obtain the requisite nuclear engineering, construction, construction management, quality assurance and quality control expertise, or had the ability to obtain same, sufficient to design, engineer and construct STP in accordance with the Participation Agreement and project agreements, the Brown & Root Contract, the Act, the rules, regulations and requirements thereunder, and to have STP licensed for operation with the Nuclear Regulatory Commission ("NRC"). In December, 1973, HLP represented and Austin in good faith believed that HLP could and would properly perform and discharge its duties as Project Manager. Further, Austin believed that the other participants in good faith believed that Brown & Root possessed or could obtain the expertise described above and that HLP could and would so properly perform as Project Manager.

STP was not designed, engineered or constructed in accordance with the Participation Agreement and project agreements, the Brown & Root contract, the Act, the rules, regulations and requirements thereunder because Brown & Root did not have the above-described expertise and because HLP did not properly perform and discharge its duties as Project Manager.

Austin's belief as to the expertise of Brown & Root and the ability of HLP to properly perform and discharge its duties as Project Manager relate to material facts essential to its entering into the Participation Agreement and remaining as a party to the Participation Agreement, that is, the identity and ability of the party which would design, engineer, construct and provide construction management, quality assurance and quality control services for STP and the ability of HLP to properly perform and discharge its duties as Project Manager.

Brown & Root did not in 1973 or thereafter have the expertise described above and Brown & Root did not have any reasonable prospects of obtaining that expertise. HLP did not in 1973 or

thereafter properly perform and discharge its duties as Project Manager.

Accordingly, STP was not designed, engineered or constructed in accordance with the Participation Agreement and project agreements, the Brown & Root contract, the Act, and the rules, regulations and requirements thereunder.

As a result of the mistaken beliefs of the parties relating to the capabilities of Brown & Root and because of HLP's failure to properly perform and discharge its duties as Project Manager, as set forth above, Austin is entitled to reform the Participation Agreement.

V.

From 1973 through approximately 1981, HLP represented to Austin that Brown & Root had or could obtain the expertise described above and that Brown & Root would and could design, engineer and construct STP in accordance with the Participation Agreement and project agreements, the Brown & Root contract, the Act, the rules, regulations and requirements thereunder, and be licensed for operation with the NRC and that HLP could and would properly perform and discharge its duties as Project Manager.

In reliance thereon, the City of Austin entered into and remained in the Participation Agreement, participated and continued to participate in the ownership and funding of STP, and forebore from taking action with respect to STP, HLP or Brown & Root.

The representations made by HLP to Austin relate to material facts essential to Austin's involvement in STP, that is, the identity and ability of the party which would design, engineer, construct and provide construction management and quality assurance and quality control services for STP and the ability of HLP to properly perform and discharge its duties as Project Manager.

The representations made by HLP to Austin were not true in that Brown & Root in 1973 or thereafter did not have the expertise described above and did not have any reasonable prospects of obtaining that expertise and HLP did not properly perform and discharge its duties as Project Manager.

As a result of such action or forebearance by Austin, Austin has suffered the damages set forth below, for which there is no adequate remedy at law.

After 1977 Houston Industries controlled HLP and induced, incited, abetted or participated in the actions described above.

VI.

Austin entered into the Participation Agreement based upon the good faith belief that Brown & Root had or could obtain the expertise described above and that HLP could and would properly perform and discharge its duties as Project Manager.

Brown & Root, in fact, did not have and had no reasonable prospects of obtaining such expertise and HLP did not properly perform and discharge its duties as Project Manager

Austin's beliefs relate to material facts essential to its entering into and remaining in the Participation Agreement, that is, the identity and ability of the party which would design, engineer, construct and provide construction management, quality assurance and quality control services for STP and the ability of HLP to properly perform and discharge its duties as Project Manager.

Austin maintained the preceding good faith beliefs in December, 1973, and thereafter, despite the exercise of ordinary care on its part.

The facts that Brown & Root was to be the architect, engineer, constructor and construction manager on the project and that HLP would properly perform and discharge its duties as Project Manager are of such great consequence to the Participation Agreement that to enforce the Participation Agreement, despite Austin's mistaken beliefs, would be unconscionable so that Austin is entitled to reform the Participation Agreement.

Reformation of the Participation Agreement will not prejudice the rights of HLP.

VII.

Under the Participation Agreement, HLP is to provide for and is responsible for the planning, construction and operation of STP in accordance with the Participation Agreement and the

project agreements. These duties relate to a material aspect of the Participation Agreement, that is, the overall coordination and responsibility for the design and building of STP.

Austin's obligation to pay for STP was and is, in part, dependent upon the performance of the above-described duties by HLP.

HLP breached the preceding duties by, among other things:

(a) Selecting Brown & Root to provide the services described above;

(b) Contracting with Brown & Root;

(c) Failing to terminate Brown & Root prior to 1981;

(d) Failing to discern that Brown & Root could not and was not performing as required;

(e) Failing to promptly inform Austin that Brown & Root could not and was not performing as required; and

(f) Failing to properly perform and discharge its duties as Project Manager.

As a result of such acts or omissions by HLP, Austin has suffered the damages set forth below, for which there is no adequate remedy at law.

Houston Industries induced, incited, abetted and participated in the preceding actions of HLP.

VIII.

As a result of HLP's breaches of its contractual obligations, the mistaken beliefs of the parties at the time of entering into the Participation Agreement, Austin's forebearance from taking action with respect to STP, HLP and Brown & Root, and the misplaced reliance on HLP, as set forth above, there has been a material failure of consideration to Austin with respect to the Participation Agreement so that Austin is entitled to reformation of the Participation Agreement as set forth below and have all sums which it has paid pursuant to the Participation Agreement returned to it by HLP.

IX.

As a result of the matters described above, Austin has been damaged in an amount in excess of the jurisdictional amount of this court by virtue of its increased capital and interest expenditures for STP, its loss of use of STP, the necessity to purchase or generate replacement power at higher costs, and its inability to plan and provide for the future power needs of Austin, plus expenditures for attorneys' fees and expenses.

PRAYER

WHEREFORE, Plaintiff respectfully requests this Court to:

(a) Reform the Participation Agreement, such that (1) Austin conveys to HLP its right, title and interest in and to STP; and (2) HLP refunds to Austin the approximately Four Hundred and Thirty-Seven Million Dollars ($437,000,000) expended by Austin to date with respect to STP and all future sums expended by Austin with respect to STP;

(b) Relieve Austin of each obligation, whether past, current or future, to provide money, property or materials with respect to STP;

(c) Enter judgment in favor of Austin and against HLP and Houston Industries, jointly and severally, in the amount of damages to which Austin is entitled, together with interest, costs and attorneys' fees.

(d) Award such other relief, general and special, legal and equitable, as the Court deems appropriate under the circumstance.

THE STATE OF TEXAS §
§
COUNTY OF TRAVIS §

Albert DeLaRosa, being first duly sworn, deposes and says that he is the City Attorney for the City of Austin, Texas, a municipal corporation, incorporated under the laws of the State of Texas and its Home Rule Charter and located in Travis County,

Texas and that the allegations contained in Paragraph VIII of Plaintiff's Original Petition are true and correct.

Albert DeLaRosa
City Attorney
City of Austin, Texas

SUBSCRIBED AND SWORN TO before me on this the 6th day of January, 1983.

Notary Public in and for
Travis County, Texas

My Commission Expires:
September 1, 1985

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CITY OF AUSTIN, TEXAS

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ATTORNEYS FOR PLAINTIFF,
THE CITY OF AUSTIN, TEXAS

City/State

Austin group wants HL&P to kill South Texas Project

By HAROLD SCARLETT
Post Environment Writer

An Austin anti nuclear group is trying to persuade the South Texas Nuclear Project's partners to scrap the project and write off the $2 billion already spent on it, claiming this will avert even heavier losses in the long run.

The South Texas Cancellation Campaign contends completion of the 2,500-megawatt nuclear plant near Bay City will be "a high risk investment in a defective product."

As arguments against completion, the STCC listed financing difficulties, recurring breakdowns and costly repairs in nuclear plants generally, repeated discoveries of new defects in plants, construction delays and soaring costs, and public safety and health risks.

It predicted the ultimate cost of the project will be $7 billion to $8 billion rather than the $5.5 billion now projected.

The STCC argued that the $3 billion to $5 billion saved by cancellation could be spent on conservation, energy efficiency and renewable energy sources. It said these steps would "provide a megawatt of energy at roughly one-fourth the cost of STNP."

But a spokesman for Houston Lighting & Power Co., the project's managing partner, called the cancellation proposal "a dumb idea, impractical and unrealistic."

"Apparently no consideration is given the fact that we need the energy that will come out of this plant, or that we would just walk away from this huge investment," spokesman Graham Painter said. "Or that when carried to completion, the plant can provide the energy equivalent of 25 million barrels of oil a year."

Painter pointed out that cancellation of the South Texas Project would entail about six times the $366 million loss that HL&P incurred when it recently canceled the Allens Creek nuclear plant.

An STCC leader, Lanny Sinkin, conceded that putting over the cancellation idea is "a big job." But Sinkin said he believes "it can be done before 1983 is out."

Sinkin said the STCC will send a 68-page "briefing paper" on cancellation to HL&P directors before a May 11 stockholders meeting. He said he hopes the cancellation issue will be raised at the meeting.

An order of Roman Catholic nuns, the Sisters of the Sorrowful Mother, recently succeeded in getting a stockholder vote at the May 11 meeting on halting all work on the nuclear project for an independent review of its problems.

Sinkin said the STCC's campaign predated the nuns' action and was not connected with it.

Sinkin, a University of Texas law student, has represented a San Antonio group, Citizens Concerned About Nuclear Power, in a Nuclear Regulatory Commission hearing on an operating license for the South Texas Project.

Jerome Goldberg, HL&P's vice president for nuclear construction, was given a copy of the cancellation briefing paper by Sinkin and was unimpressed.

"It is pretty much a rehash of issues that Lanny has been raising a long time," said Goldberg, a veteran nuclear engineer. "This paper is basically a very personal statement. It represents one man's view of the world — a world without nuclear power, regardless of the cost."

Sinkin said STCC began distributing the briefing papers in stages about six weeks ago and has sent copies to Austin and San Antonio city councilmen. Both cities' utilities are partners in the nuclear project, along with Central Power & Light Co. of Corpus Christi.

Briefing papers in a week or two will start going to the Houston City Council, which has been hostile to recent HL&P rate requests, and to HL&P officials, Sinkin said.

He said Austin has been the most receptive city toward cancellation, noting that the city's Electric Utility Commission at a Monday night meeting ordered its staff to make a study of possible project alternatives — including cancellation.

Sinkin said many Austin city council candidates in an April 2 election, in responding to an STCC questionnaire, said they either favored cancellation or were willing to study it further.

Austin in a Jan. 6 lawsuit against HL&P accused the utility of mismanaging the South Texas Project. The suit seeks reimbursement by HL&P of the $437 million Austin has spent on the project, and the assumption by HL&P of Austin's 16 percent share of the project.

"The consensus of lawyers I've talked to is that HL&P will never let that case go to trial — they can't afford to," Sinkin said. "They'll go into reorganization and pay off a few cents on the dollar."

The briefing paper contends that other negatives in HL&P's continuing the project include a dearth of nuclear investment money, design flaws in the Westinghouse reactor vessels and steam generators of the type being used at the South Texas Project, a potential stockholder revolt and a reconstituted and increasingly hostile Public Utility Commission.

Since Three Mile Island, the paper said, all 19 nuclear utility projects then seeking NRC construction permits, including Allens Creek, have been canceled.

In 1982 alone, the paper said, utilities canceled projects at a total loss of $5.4 billion, including $540 million spent by Virginia Electric Power Co. on its North Anna No. 3 nuclear plant.

"The harsh reality," the STCC paper argued, "is that over the past two decades, nuclear power plants have proven themselves to be unreliable, dangerous and astronomically expensive."

Sinkin said STCC hopes to meet with HL&P officials before the May 11 shareholder meeting to discuss the cancellation idea.

"I'm convinced from hearing testimony and private discussions that if you could get the HL&P directors off on a retreat somewhere and they let their hair down, they would really like to be out from under it (the South Texas Project)," Sinkin said.

Painter of HL&P, however, said the utility is having to serve 80,000 new customers a year and must have the power from the South Texas Project.

He said HL&P is not planning to build new plants to serve all its needs, but is purchasing power from other sources and is already practicing conservation and load management as suggested by STCC.

"We are trying to shave 1 million kilowatts by 1990 through conservation and load management," Painter said. "But despite all this, we must face the fact that South Texas is growing rapidly and our new customers must be served."

EXHIBIT 5

Scientists discuss lunar meteorites

Scale of justice?

Climber hoping to avoid jail