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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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Before Administrative Judges  
Charles Bechhoefer, Chairman  
Dr. James C. Lamb  
Mr. Ernest E. Hill

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In the Matter of	)	ASLBP No. 79-421-07 OL
	)	
HOUSTON LIGHTING AND	)	Docket Nos. STN 50-498 OL
POWER COMPANY, ET AL.	)	STN 50-499 OL
	)	
(South Texas Project	)	
Units 1 and 2)	)	January 10, 1983

MEMORANDUM AND ORDER  
(Denying CCANP's Motion to Reopen Record)

On December 6, 1982, Intervenor Citizens Concerned About Nuclear Power, Inc. (CCANP) filed a motion to reopen the record of Phase I of this operating license proceeding. The motion is opposed by the Applicants and NRC Staff. For reasons set forth below, we deny CCANP's motion.

In our Fourth Prehearing Conference Order dated December 16, 1981, we determined that this proceeding should be divided into 3 phases and that a partial initial decision would be issued for each phase. Consistent with the Commission's direction in CLI-80-32, 12 NRC 281 (1980), the first phase was to be an expedited hearing encompassing, inter alia, issues bearing upon the technical competence and character of Houston Lighting and Power Co. (HL&P) to build and operate the facility. The

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record for Phase I was closed on June 17, 1982 (Tr. 10722). Proposed findings of fact and conclusions of law have been filed by all parties, and we are in the process of preparing the Phase I partial initial decision.

CCANP seeks to reopen the record to take testimony with respect to recent rulings by the Texas Public Utility Commission and one of its hearing examiners. From the newspaper clippings which CCANP submitted in support of its motion, it appears that HL&P sought a rate increase in part to compensate it for amounts it had expended for the now-cancelled Allens Creek Nuclear Project, that a hearing examiner ruled that HL&P should recover only a portion of those costs, and that the full Commission later upheld most of the hearing examiner's recommendations and conclusions. The hearing examiner apparently made critical comments about HL&P's management, and the Commission apparently noted its belief that the South Texas project had been mismanaged in certain respects. CCANP asserts that these rulings bear on HL&P's managerial character and warrant reopening of the record in this proceeding. The evidence which CCANP would add to this record includes "the hearing examiner's recommendations, the final order of the PUC, the transcript of the Commissioners' discussion of their ruling in this docket, and possibly direct testimony by the Commissioners themselves."

The Applicants and Staff correctly observe that a proponent of a motion to reopen a record which has been closed bears a heavy burden. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620 (1976). As is well

established, the motion must be timely, it must address significant safety (or environmental) issues, and it must have the potential of altering the result which would otherwise be reached. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-707, 16 NRC \_\_\_\_, \_\_\_\_ (December 21, 1982) (slip op. p. 7, n. 4); Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 2), ALAB-486, 8 NRC 9 (1978); Wolf Creek, ALAB-462, supra; see also Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 64 n. 35 (1977); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973).

In applying those criteria to the motion before us, there is no question as to its timeliness or of the significance of the managerial character issue which the newly proffered material would address. Beyond that, however, we fail to discern why the material in question itself is important to our resolution of the management character issue before us or how it could have a significant effect on our consideration of that issue. CCANP has not supplied the opinion of either the PUC or its hearing examiner. But from what we can glean from the newspaper clippings before us, those opinions focused solely on economic matters such as costs and scheduling. The PUC and its hearing examiner appear to have criticized HL&P's financial management of the Allens Creek project and perhaps of this project as well. They seem to find fault with HL&P's failure to terminate Allens Creek at an earlier time, and with some of the cost overruns on this project. Such considerations

have no necessary bearing on the safety questions which we have before us, and CCANP has not adequately explained how any such link might exist. CCANP has identified no facts of safety significance which it claims should be added to this record. Any inference that poor financial management practices (were they to exist) necessarily have safety significance is too tangential to call for a reopening of the record.

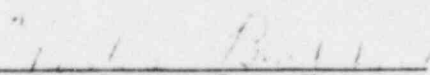
Finally, some of the issues to be considered in Phase II could affect certain of our prospective Phase I rulings, and we have already stated that our Phase I decision will be subject to modification should the Phase II hearings produce a record which would dictate that result. Fourth Prehearing Conference Order, supra, at p. 5. If CCANP were to be able to establish that the PUC decisions or the underlying record covered matters of substantial safety significance not yet included in this record, we would give serious consideration to adding these matters to those which are to be heard in Phase II.

For these reasons, it is, this 10th day of January, 1983

ORDERED

That CCANP's motion to reopen the Phase I record is denied.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE