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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

OFFICE OF SECRETARY
PLANNING & SECURITY
BRANCH

In the Matter of
HOUSTON LIGHTING AND
POWER COMPANY, ET AL.

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(Docket Nos. 50-498 OL
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(South Texas Project,
Units 1 and 2)

CITIZENS CONCERNED ABOUT NUCLEAR POWER, INC. (CCANP)
MOTION FOR ADDITIONAL TIME

I. Introduction

On March 14, 1984, the Atomic Safety and Licensing Board in this proceeding issued its Partial Initial Decision (Operating License) (Phase I), ASLBP NO. 79-421-07 OL [hereinafter "PID"].

On March 23, 1984, pursuant to 10 C.F.R. Section 2.762(a), Citizens Concerned About Nuclear Power, Inc. (CCANP), Intervenor, filed its notice of appeal from said partial initial decision.

Under 10 C.F.R. Section 2.762(b), CCANP is permitted thirty (30) days after the filing of notice of appeal to file its appeal brief. CCANP hereby moves the Atomic Safety and Licensing Appeal Board to grant an additional ninety (90) days for the filing of CCANP's appeal brief.

II. Discussion

A. The central issue in this proceeding is very important and unique.

Character is one of the qualifications for an NRC license specifically established by the Atomic Energy Act. 42 U.S.C. Section 2232(a). As noted by the ASLB, all parties in this proceeding agree character is a "fundamental" requirement for a

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license applicant, PID at 8, and one of the central foci of this entire proceeding, PID at 7.

But this proceeding is the first in NRC history to directly address the statutory issue of character - the definition of character, the measurement of character, and the standard of character to be adopted by the NRC. PID at 12, note 13.

Before even beginning the hearings, the ASLB requested briefs from the parties on the concept of character. PID at 8, n. 6.

In its Partial Initial Decision, the Board devoted a separate section to the legal standards for determining character. See PID at 7-25.

The decision in this case will have far reaching effect in setting forth for applicants, license holders, and the general public just what character means to the NRC and how that meaning will manifest itself in regulatory decisions.

Given the importance of the character issue and the unique nature of the inquiry, CCANP seeks more than thirty (30) days to analyze and respond to the ASLB's handling of this issue.

B. The Atomic Safety and Licensing Board and Citizens Concerned About Nuclear Power appear to have a significant divergence in the treatment of the character issue.

In its findings of fact and conclusions of law, CCANP put a great deal of effort into defining character and applying that definition to the record in this proceeding. The ASLB found that CCANP's definition provided traits "generally relevant to character" and "closely track[ed] the definition of character which we found appropriate." PID at 18.

But the ASLB then immediately dismissed CCANP's labors as

offering "little assistance in providing answers to the questions raised" in this case by the Commission. Id.

CCANP thus faces the task of determining what definition, measurement, and standard of character the ASLB does in fact adopt and comparing the Board's exploration of character in the record with CCANP's to determine where CCANP disagrees with the Board.

Given the importance of this unique inquiry as to character and the task set for CCANP by the ASLB's rejection of CCANP's analytical framework for the character concept, CCANP needs more than thirty (30) days to respond to the Partial Initial Decision.

C. The ASLB in this proceeding produced an opinion distorted by the bias of the Board toward the Applicants.

As the Appeal Board is well aware, a member of the ASLB in this proceeding was removed at one time by a unanimous vote of the Appeal Board but later restored to his position by a 3-2 vote of the Commissioners. In this appeal, CCANP does not intend to relitigate that removal as CCANP's remedies within the Commission on this matter are exhausted.

Nevertheless, CCANP believes the record of this proceeding and the Partial Initial Decision itself clearly reflect a bias favoring the Applicants. CCANP contends and will argue on appeal that its rights to a fair administrative hearing, including its rights to a decision on the issues as litigated, were violated.

This analysis will require research on what constitutes due process in administrative hearings and careful scrutiny of both the record and the reasoning behind the Partial Initial Decision. To carry out this analysis in addition to the other matters to be

explored on appeal, CCANP seeks more than the thirty (30) days provided for an appeal brief by 10 C.F.R. Section 2.762(b).

D. The opinion, record, and pleadings in this proceeding are very lengthy.

The Partial Initial Decision of the Atomic Safety and Licensing Board is 287 pages long. This decision is based on a record composed of a transcript containing more than 10,000 pages with roughly 300 exhibits. The pleadings by the parties are voluminous. The parties filed findings of fact and conclusions of law running to hundreds of pages. To adequately review the proceeding in the light of the ASLB's opinion and respond to the opinion itself require more than thirty (30) days.

E. Intervenor must prepare for the next phase of the licensing proceeding.

Since Phase I has not yet resulted in license denial, CCANP and its representative must also prepare for Phase II litigation. Phase II will examine the substance of a consultant's report of more than 500 pages containing more than 300 deficiencies in the design and engineering at this plant. Applicants and their new contractors have responded to this consultant's report with hundreds of pages of additional documentation. The NRC has also produced a lengthy study to be submitted as part of the Phase II inquiry. CCANP is awaiting daily the issuance of an NRC brief on one of the central issues in Phase II which CCANP will then have 30 days to reply to.

Furthermore, in its Partial Initial Decision, the ASLB expanded the nature of the Phase II proceeding prompting CCANP to file a request for further discovery in order to prepare for Phase II. See Attachment 1 hereto.

F. Intervenor resources are limited.

Throughout this proceeding, CCANP relied primarily on one person to represent CCANP's position. While some help is available to CCANP on this appeal, the burden of the appeal still rests primarily on the same individual. Preparing for and participating in Phase II is also the responsibility of this one individual.

III. Conclusion

Given the demands of this appeal and Phase II preparation, the Intervenor seeks relief in the form of additional time to prepare the appeal from the Partial Initial Decision.

For the above and foregoing reasons, Citizens Concerned About Nuclear Power, Inc. hereby moves the Atomic Safety and Licensing Appeal Board to grant CCANP an additional ninety (90) days to prepare its appeal from the Partial Initial Decision (Operating License) (Phase I), ASLBP No. 79-421-07 OL.

Respectfully submitted,

/s/

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