

June 26, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

04 JUL-2 P4:20

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
HOUSTON LIGHTING AND POWER COMPANY,)	Docket Nos. 50-498
<u>ET AL.</u>)	50-499
)	
(South Texas Project, Units 1 & 2))	

NRC STAFF RESPONSE TO CITIZENS CONCERNED ABOUT
NUCLEAR POWER (CCANP) MOTION FOR RECONSIDERATION

I. INTRODUCTION

In a memorandum dated June 11, 1984, the Atomic Safety and Licensing Board has invited the parties to comment upon CCANP's June 6, 1984 Motion for Reconsideration (Motion) concerning discovery in this proceeding. For the reasons set forth herein, Staff opposes CCANP's motion.

II. BACKGROUND

On March 29, 1984, CCANP filed a motion requesting ninety days additional discovery for the Phase II issues in this proceeding pertaining to the findings of the Quadrex Report. In its May 22, 1984 Memorandum and Order, the Licensing Board granted this additional time, and again set out the scope of Phase II of these proceedings and discovery. The Board in granting this extension of time limited discovery on the Quadrex Report to those matters concerning Houston Lighting & Power Company's (HL&P's) past character or competence which it believed

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relevant to Phase II of the South Texas Project (STP) operating license hearings.^{1/} Order at 5-6.

On June 6, 1984, CCANP filed a Motion for Reconsideration (Motion) of this Order which requested that: (1) discovery not be limited as to any aspect of Quadrex Report; (2) the issues for Phase II not be defined until after discovery; and (3) the discovery period should not commence until after the filing of the brief's on notification and reportability by all parties.

On June 11, 1984, the Licensing Board invited the parties to respond to CCANP's Motion for Reconsideration.

III. DISCUSSION

A. CCANP's Request That Discovery Not Be Limited as to Any Aspect of The Quadrex Report

In the Phase I hearings of this proceeding the Board found that, subject to questions concerning the timely notification of the NRC of the Quadrex Report and corrective actions taken as a result of that report, HL&P had a sufficiently high level of managerial competence and character to be granted licenses to operate STP. March 14, 1984 PID at 30-51. It further found that HL&P's current construction and design programs and its review of its contractors meet the requirements of the Commission's regulations, and that STP can be completed in accordance with Commission requirements. Id. at 60-62.

^{1/} Essentially this involved HL&P's notification of the NRC and other parties of this report and corrective actions taken by HL&P as a result of the report. Memorandum and Order, May 22, 1984, at 5-6.

With respect to the issue of character, the Board reiterated in its May 22, 1984 Memorandum and Order for Phase II discovery that, except for questions concerning notification of the NRC of the Quadrex Report, it had resolved the character issue in Phase I of the hearings, and that deficiencies in Brown & Root's (B&R's) engineering performance examined in the Quadrex Report would not be helpful in assessing HL&P's character. Memorandum and Order, May 22, 1984 at 5; PID 37-39, 46. CCANP asks that the Board reconsider this decision to limit character evidence in Phase II to the question of the timely notification of the NRC of the Quadrex Report by hypothesizing that it is possible that evidence revealed by the Quadrex Report might show that HL&P attempted to "keep the Commission in the dark" about HL&P's and B&R's inability to design and engineer the project. Motion, at 2. Even if this argument was based on something more than conjecture, a reconsideration of the current discovery order would not lead to a reopening of the proceeding to litigate these matters. The Fourth Prehearing Conference Order, December 16, 1981, at 4, provided that Phase I of this proceeding was to deal with "all events which transpired before September 24, 1981." It further provided Phase I would include "all past events involving B&R as design engineer, construction manager and contractor, and the involvement in those activities of HL&P." Id. Questions of whether HL&P might have hid B&R's design or engineering deficiencies from the Commission were relevant to B&R's performance before September 24, 1981, and HL&P's involvement therein, and were to be litigated in Phase I. They do not involve the procedures involved in notifying the NRC of the Quadrex Report or whether the substance of the Quadrex Report is correct which are the subjects of Phase II of this proceeding. Memorandum and Order, May 22, 1984, at 5; Fourth Prehearing

Conference Order, December 16, 1981, at 4-5. Reconsideration of the current discovery order would not change the scope of Phase II of these proceedings, and no cause exists to again open for litigation or discovery matters relevant to character which, by order of December 1981, were to deal with Phase I of this proceeding.

With respect to the issue of competence, the Licensing Board ruled that since it had already found in Phase I that the HL&P had earlier lacked competence, there is no need for cumulative evidence from any additional deficiencies which might be uncovered from the Quadrex Report. Memorandum and Order, May 22, 1984, at 5. In its Motion for Reconsideration, CCANP argues that this ruling erroneously assumes that "the same causes the Board found to be the reason for earlier lack of competence, i.e., inexperience and long lines of communication, are necessarily the same causes for the lack of confidence demonstrated by the Quadrex Report" and that no evidence could be developed to establish any other cause for lack of confidence. Motion at 2. The Motion ignores that Phase I of the hearing considered "the related question of the adequacy of plans for design, a review of past problems, project construction and HL&P management involvement." Fourth Prehearing Conference Order at 4; PID at 61-62. Extensive hearings were held on this issue and extensive findings issued. PID at 107, 209-222. No indication is given why these matters should again be litigated, or how evidence on the causes of the matters reported in the Quadrex Report could be other than cumulative to evidence dealing with HL&P's earlier lack of competence. Nor could such evidence be material to HL&P's present competence to design and build the South Texas Project.

In addition, CCANP complains (at p. 3) that the Board could not judge whether any corrective action taken by HL&P will be effective unless it is aware of the deficiencies revealed by the Quadrex Report. This concern is unfounded since the Board has specifically stated that discovery will be permissible as to whether "the corrective actions being followed by the applicants and their current contractors are adequate to resolve any safety-significant deficiencies revealed by the Quadrex Report." Memorandum and Order, May 22, 1984, at 6.

CCANP also fears that the notification and reportability question can not be resolved if the report is not admitted into evidence for the truth of what it contains. Motion at 3. The Licensing Board has resolved any such problem, however, in its June 11, 1984 Memorandum which states that "the Board's plan for litigating the Quadrex Report remedial action is to assume (as did the Staff) that the various deficiencies alluded to in that report in fact occurred."

No basis exists to expand the scope of discovery on the Quadrex Report.

B. CCANP's Request That Discovery Not Commence Until After Filing of Briefs on Notification and Reportability by the Parties

CCANP also requests that the ninety day period for discovery not begin until after August 24, 1984 when briefs are filed by the parties on the notification and reportability issue. Motion at 4. Its reason for this delay is that it should know the position of the parties on this issue prior to the commencement of discovery.

CANP's request should be rejected. The Board has already been most generous in granting extensions to Phase II discovery which began in

February 1983. Memorandum and Order, May 22, 1984, at 2-3. CCANP's instant request would extend this discovery until November 22, 1984, an extension to which it is not entitled due to its past dilatory behavior.^{2/} Moreover, it is not apparent (nor has CCANP attempted to demonstrate) why CCANP needs the parties' legal theories in order to frame discovery requests. The lack of a showing of need also prevents the grant of this third or fourth request for extension of time to propound discovery.

C. CCANP's Request that There be no Defining of the Issues to be Litigated Until After the Discovery and the Prehearing Conference

CCANP also asks that issues herein be defined. They have already been defined. In addition to the hurricane issue, they are whether HL&P properly notified the NRC of the Quadrex Report, the corrective actions taken on Quadrex Report items, and HL&P's competence to finish construction of STP. Memorandum and Order, May 22, 1984, at 5-6, 8-9; Memorandum and Order, June 22, 1983, at 1. Moreover, as this Board has twice ruled, it is CCANP's obligation to specify the particular items in the Quadrex Report which have been inadequately resolved and the basis for such conclusions, and any other specific matters it wishes to litigate relevant to HL&P's competence to finish construction. See Memorandum and Order, June 22, 1983, at 3-4; Memorandum and Order, May 22, 1984, at

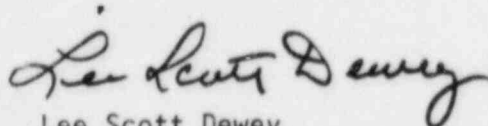
^{2/} The Licensing Board had initially provided a ninety day discovery period for Phase II which was scheduled to end on April 25, 1983. During this period, CCANP failed to file any discovery request. It then waited until October 28, 1983 to request an additional ninety day period for discovery regarding these issues. On May 22, 1984, the Licensing Board granted this request and permitted discovery until August 31, 1984. See Memorandum and Order at 1-2, 6-7.

12-13. The Staff will vigorously object to evidence by CCANP on any item in the Quadrex Report not specifically identified with a detailed statement of why it was not properly resolved.

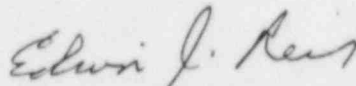
IV. CONCLUSION

For the above stated reasons, CCANP's Motion for Reconsideration regarding its request to extend the time for discovery and to defer ruling upon the issues should be denied.

Respectfully Submitted,



Lee Scott Dewey
Counsel for NRC Staff



Edwin J. Reis
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 26th day of June, 1984

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NUCLEAR REGULATORY COMMISSION

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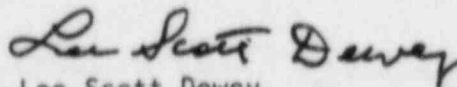
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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with § 2.713, 10 C.F.R. Part 2, the following information is provided:

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Respectfully submitted,



Lee Scott Dewey
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 26th day of June, 1984

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CITIZENS CONCERNED ABOUT NUCLEAR POWER (CCANP) MOTION FOR RECONSIDERATION" and "NOTICE OF APPEARANCE" of Lee Scott Dewey in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 26th day of June, 1984:

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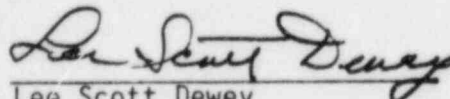
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