

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANTS' POSITIONS REGARDING
ISSUES APPROPRIATE FOR LITIGATION DURING
PHASE II

Pursuant to the Atomic Safety and Licensing Board's (Board) May 22, 1984 Memorandum and Order and its September 7, 1984 Order, Applicants hereby provide their positions with respect to those matters which are appropriate for litigation during Phase II of this proceeding.

I. HL&P's Reporting of the Quadrex Report

In the Board's June 22, 1983 Memorandum and Order, it directed the NRC Staff to submit a brief on the reportability of the Quadrex Report pursuant to 10 C.F.R. § 50.55(e), 10 C.F.R. Part 21 and the McGuire^{*/} line of precedents and authorized the other parties to respond. In doing so, the Board recognized that "[t]he questions which CCANP has

*/ Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623 (1973).

raised concerning the reportability of the Quadrex Report may . . . present a legal, rather than factual issue." Memorandum and Order (June 22, 1983) at 6.

The reportability of the Quadrex Report pursuant to section 50.55(e), Part 21 and the McGuire precedents has been addressed in the briefs filed by the NRC Staff (dated August 24, 1984), the Applicants (dated September 28, 1984) and Citizens Concerned About Nuclear Power (CCANP) (dated October 1, 1984).^{*/} Applicants and Staff have concurred that all of the matters reportable under section 50.55(e) and Part 21 have been reported, but disagree as to the reportability of the Quadrex Report pursuant to the McGuire precedents. CCANP argues that HL&P should have notified the NRC Staff of the entire Quadrex Report as a potentially reportable matter pursuant to section 50.55(e) because it allegedly documented a significant breakdown in a portion of the South Texas Project (STP) quality assurance program. CCANP argues that HL&P also violated its McGuire obligations.

The Board has concluded that even if it "were to disagree [with the concurring conclusions of the Staff and Applicants regarding HL&P's section 50.55(e) obligations], the failure to have reported would not reflect adversely on HL&P's character . . ." (Memorandum and Order (July 10, 1984) at 8), and that "the issue of the adequacy of HL&P's character [has]

^{*/} CCANP has not addressed the reportability of the Quadrex Report pursuant to 10 C.F.R. Part 21 in its brief.

been resolved by [its] March 14, 1984 PID, except to the extent that HL&P's promptness (or lack thereof) in turning over the report to the Staff, other parties and the Board may be said to reflect on that character." Memorandum and Order (May 22, 1984) at 5.

Applicants agree with the Board that HL&P's reporting of the Quadrex Report is only relevant to this proceeding to the extent it reflects upon HL&P's character. Particularly in view of the subjective nature of the section 50.55(e) reporting requirements,^{*/} the Board is correct in concluding that, even if it should disagree with the Applicants' and the Staff's conclusions, such disagreement would not reflect adversely on HL&P's character. Thus, although CCANP disagrees concerning the reportability of the Quadrex findings pursuant to section 50.55(e), there is no issue to be litigated before this Board that would affect its conclusions regarding character.

Furthermore, even if HL&P's and the Staff's concurring opinions were not dispositive, CCANP has failed to appropriately identify in its brief any litigable issue of law or fact relating to section 50.55(e) reportability. Although CCANP quotes copiously from the generic findings in the Quadrex Report, it fails to acknowledge the repeated

^{*/} Section 50.55(e) does "not provide precise definitions for events that are reportable," and "[m]uch is left to the judgment of the licensee's staff and of the NRC Staff." Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), LBP-78-10, 7 NRC 295, 299 (1978).

statements of Quadrex that such findings were based solely upon its discipline findings. More importantly, CCANP fails to identify within either the generic findings or the discipline findings any factual support for any alleged failure to comply with Appendix B of 10 C.F.R. Part 50. There is, therefore, no basis for any litigation of alleged QA deficiencies before this Board.

Thus, the only issue relating to the reportability of the Quadrex Report that has been properly presented before the Board is the question of whether HL&P complied with the McGuire precedents and whether any failure to do so is relevant to HL&P's character. Although HL&P disagrees with the conclusions as to reportability under McGuire reached by the Staff and CCANP, no factual disputes have been raised in the briefs. Thus, since the only disagreements among the parties are legal in nature, no evidentiary hearing is required and the Board may rule on this subject on the basis of the briefs and oral argument.

II. Adequacy of Resolution of the Quadrex Findings

The Board has stated that the "past activities and procedures [of HL&P and Brown & Root] can have little impact on the potential licenseability of the project, as long as any design errors which may have occurred are satisfactorily remedied. . . ." Memorandum and Order (July 10, 1984) at 6.

Thus, it has concluded that the adequacy of corrective actions to resolve "any safety-significant deficiencies

revealed by the Quadrex Report" would be relevant to Phase II, and has instructed CCANP "as a predicate to litigation . . ." to "identify particular safety questions which it claims arise from the Quadrex Report and have not, in its opinion, been adequately resolved through the Bechtel or NRC Staff reviews."*/ Memorandum and Order (May 22, 1984) at 6; Memorandum and Order (June 22, 1983) at 4.

CCANP has, however, failed to identify any specific safety significant findings for which HL&P's corrective actions are allegedly inadequate. As a result, there is no basis for litigating the adequacy of HL&P's resolution of any of the Quadrex findings during the Phase II hearings.

III. CCANP Contention 4 (Hurricane Design)

Applicants have reviewed CCANP contention 4 regarding STP hurricane design as well as its discovery responses. Having concluded that there is no genuine issue as to any material fact and that they are entitled to a decision as a matter of law pursuant to 10 C.F.R. § 2.749, Applicants intend to file a motion for summary disposition shortly after the prehearing conference. The Board's action on

*/ The Board contemplated that CCANP's supplemental answers to Applicants' interrogatories would identify the specific safety issues CCANP intended to litigate. Memorandum and Order (June 22, 1983) at 4. CCANP's supplemental answers, filed on September 7, 1983, have not done so.

Applicants' motion (based upon the motion, the parties' responses and any oral argument deemed appropriate by the Board) will determine whether any evidentiary hearings are necessary.

V. Phase II Report

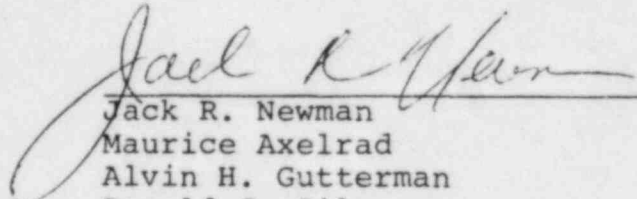
Finally, the Board's March 14, 1984 PID directed the Staff to prepare a report "concerning the performance of HL&P, Bechtel and Ebasco at STP since the close of the Phase I record" with respect to, among other things, "the effectiveness of Bechtel and Ebasco procedures in areas which have been the subject of Phase I litigation. . . ." PID at 56. The other parties were authorized to respond to the Staff's report. Id.

In requiring preparation of the Phase II report, the Board did not envision "an open-ended extension of Issue B into Phase II." Memorandum and Order (May 22, 1984) at 8. Instead, it simply called for the Phase I record to be supplemented in the manner it deemed appropriate "to help ascertain whether [its] expectations as to improvement in competence were being fulfilled." Id. at 8-9.

Applicants contemplate that the reports of the Staff and the other parties will be submitted under oath and that the Board will be able to complete the record, in much the same manner as the Licensing Board in Florida

Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-81-14, 13 NRC 677, 705-06 (1981) and Turkey Point, LBP-81-16, 13 NRC 1115, 1120 (1981), without the need for evidentiary hearings.

Respectfully submitted,



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Dated: October 5, 1984

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the "Applicants' Positions Regarding Issues Appropriate For Litigation During Phase II" dated October 5, 1984, has been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid, on this 5th day of October, 1984.

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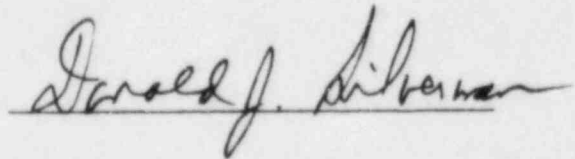
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A handwritten signature in cursive script, reading "Donald J. Silberman", is written over a horizontal line.