

403

RELATED CORRESPONDENCE  
NEWMAN & HOLTZINGER, P. C.

DOCKETED  
1615 L STREET, N.W.

WASHINGTON, D. C. 20036

202-845-0010 10/11/84 11:21

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

JACK R. NEWMAN  
JOHN E. HOLTZINGER, JR.  
HAROLD F. REIS  
MAURICE AXELRAD  
J. A. BOUKNIGHT, JR.  
PAUL H. KECK  
GEORGE L. EDGAR  
KATHLEEN H. SHEA  
DAVID G. POWELL  
DOUGLAS G. GREEN  
KAROL LYN NEWMAN  
JOHN T. STOUGH, JR.  
JAMES B. VASILE  
MICHAEL A. BAUSER  
ALVIN H. GUTTERMAN  
KEVIN P. GALLEN  
THOMAS A. SCHMUTZ  
MICHAEL F. HEALY  
ROBERT I. WHITE

WILLIAM E. BAER, JR.\*  
E. GREGORY BARNES  
DOUGLAS L. BERESFORD  
JANET E. S. ECKER  
STEVEN P. FRANTZ  
BRIAN R. GISH  
STEVEN C. GOLDBERG  
JILL E. GRANT  
FREDERIC S. GRAY  
SCOTT A. HARMAN  
DEBORAH L. HAWKINS\*  
HOLLY N. LINDEMAN  
KEVIN J. LIPSON  
DAVID B. RASKIN  
JANE I. RYAN  
DONALD J. SILVERMAN  
JACOLYN A. SIMMONS  
JOSEPH E. STUBBS  
\*ADM. VA.

ROBERT LOWENSTEIN  
NORMAN A. FLANINGAM  
OF COUNSEL

October 9, 1984

Charles Bechhoefer, Esquire  
Chairman, Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. James C. Lamb, III  
Administrative Judge  
313 Woodhaven Road  
Chapel Hill, North Carolina 27514

Judge Ernest E. Hill  
Hill Associates  
210 Montego Drive  
Danville, California 94526

Re: Houston Lighting & Power Co., et al.  
South Texas Project, Units 1 & 2,  
Docket Nos. 50-498, 50-499 OL

Dear Members of the Board:

In connection with the litigation in Texas between the owners of the South Texas Project and Brown & Root (B&R) (Houston Lighting & Power Co. v. Brown & Root, Inc., No. 81-H-0686-C (D. Ct. of Matagorda County, Texas, 130th Judicial District, filed Dec. 16, 1981), attorneys for plaintiffs engaged a consultant to prepare a report on B&R's engineering on the Project. The consultant's report was completed and transmitted to the parties, their counsel and the court on October 1, 1984.

8410110185 841009  
PDR ADDCK C5000498  
G PDR

DS03

Charles Bechhoefer, Esquire  
Dr. James C. Lamb, III  
Judge Ernest E. Hill  
October 9, 1984  
Page Two

The consultant's report is subject to a protective order entered by the Texas court (copy attached) which requires that such material not be disseminated beyond the parties, their counsel and the court.

The consultant's report assesses B&R's performance as engineer under the contract between HL&P and B&R, addressing the adequacy of personnel, procedures and processes employed by B&R engineering, as well as aspects of its engineering products. The consultant's report states that it has not identified any reportable deficiency not previously reported under NRC regulations and, also, that it has not identified any deficiency (reportable or non-reportable) not currently being addressed by Bechtel.

Although the consultant's report considers some of the same engineering processes and products as the Quadrex Report, we do not believe that it is material to any matter before the Board for adjudication, particularly as the scope of the Board's review is reflected in its clarifying memorandum of July 19, 1984:

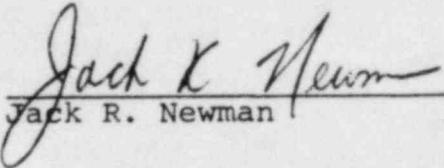
The Quadrex Report is, of course, an evaluation of the engineering practices of Brown & Root, Inc. (B&R). B&R is no longer associated with the project. Although HL&P's activities in supervising B&R's design engineering efforts may theoretically have some bearing on an overall assessment of HL&P's character, we have already examined those activities to a considerable extent. See, e.g., PID, at pp. 40-41, 44. We do not believe that further inquiry into this subject through the findings of the Quadrex Report would be productive.

Memorandum and Order (Denying Reconsideration by Clarifying Memorandum and Order of May 22, 1984), July 10, 1984, at p. 5.

Charles Bechhoefer, Esquire  
Dr. James C. Lamb, III  
Judge Ernest E. Hill  
October 9, 1984  
Page Three

Accordingly, we do not plan to provide the consultant's report to the Board or the parties in this proceeding. If, however, the Board believes any other action is required, HL&P will seek the authorization of the court.

Respectfully submitted,

  
\_\_\_\_\_  
Jack R. Newman

Attachment

cc: Service List

HOUSTON LIGHTING & POWER COMPANY, INDIVIDUALLY AND AS PROJECT MANAGER UNDER THE SOUTH TEXAS PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY OF SAN ANTONIO, TEXAS, CENTRAL POWER AND LIGHT COMPANY HOUSTON LIGHTING & POWER COMPANY AND THE CITY OF AUSTIN, TEXAS, EXECUTED AS OF JULY 1, 1973, AS AMENDED, ET AL.

I  
I  
I  
I  
I  
I  
I  
I  
I  
I  
I  
I  
I  
I  
I

IN THE DISTRICT COURT OF  
MATAGORDA COUNTY, TEXAS  
130TH JUDICIAL DISTRICT

VS.

BROWN & ROOT, INC., ET AL.

PROTECTIVE ORDER

WHEREAS, this Court is required to preserve the rights of all parties in this cause to a fair trial by an impartial jury; and

WHEREAS, this Court has previously ordered that no deposition testimony be released to the media by any of the parties to this litigation; and

WHEREAS, the likelihood is great that potential jurors will be prejudiced by pretrial publicity, given the particular circumstances surrounding this cause, which this Court takes judicial notice, which include

1. The small size of Bay City, the town where the Court is located, and the proximity of the town to the South Texas Nuclear Project;
2. The unusually emotional nature of the issues involved;
3. The pretrial status of the suit;
4. The complexity of the suit, and the enormous number of documents involved, which, if selectively disclosed to third parties by the parties or their attorneys, could present materially false impressions as to the merits of the claims and their likelihood of success and interfere with the right to a fair trial to which all parties are entitled;

5. The fact that despite the Court's order of October 11, 1983 and the provisions of Tex. R. Civ. P. 210, third parties have sought to obtain access to the depositions taken in this cause; and

WHEREAS, all parties to this cause have a constitutional right to a fair trial, while third parties have no constitutional nor common law right of access to pretrial documents obtained through the discovery process in a civil case; and

WHEREAS, this Court is entitled to issue protective orders, in its sound discretion and in light of the relevant facts and circumstances of the particular case, under Tex. R. Civ. P. 186b; it is hereby

ORDERED, ADJUDGED and DECREED that prior to trial

1. All attorneys to this action shall strictly adhere to the letter and spirit of the provisions of the Texas Code of Professional Responsibility governing comments to the media in civil cases. Specifically, all attorneys shall refrain from making extrajudicial statements which constitute an "opinion as to the merits of the claims or defenses of a party," or which are "reasonably likely to interfere with a fair trial of the action." DR 7-107(G).

2. All parties, attorneys, experts employed by the parties, court reporters, clerks and officers of the Court shall refrain from disclosing to third parties information obtained through the Court's discovery processes.

3. All depositions, interrogatories and answers thereto, requests for admissions and answers thereto, and all other documents that may be offered in evidence in this cause shall be filed under seal and shall be opened only by order of the Court.

4. If the Court determines that any party's right to a fair trial has been jeopardized by a violation of this Order, it may take appropriate action, including but not

limited to dismissing the claims for relief of any party found in violation of the Order, or ruling that any document released to the press shall be inadmissible at trial.

5. This Order shall not be interpreted to prohibit attorneys from communicating with the parties in order to prepare for trial, nor shall it be interpreted to prohibit the third parties from attending any live sessions before the Court or from publishing any information they have already obtained or may obtain in the future. The term "third parties" includes any person or organization not a party, not an attorney for a party, or not a person employed by the parties or attorneys for the parties for the purpose of assisting in this litigation.

6. This Order covers only those documents obtained through the discovery process, including deposition testimony, which may be offered in evidence in this cause, and does not cover pleadings, briefs and legal memoranda.

7. The Court shall entertain reasonable requests to modify this Order as the need arises.

SIGNED this 29th day of December, 1983.

  
\_\_\_\_\_  
JUDGE PRESIDING

EXHIBIT B

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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) )

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicants' letter of October 9, 1984, have been served on the following individuals and entities by deposit in the United States Mail, first class, postage prepaid, on this 9th day of October, 1984.

Charles Bechhoefer, Esq.  
Chairman, Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. James C. Lamb, III  
Administrative Judge  
313 Woodhaven Road  
Chapel Hill, NC 27514

Judge Ernest E. Hill  
Hill Associates  
210 Montego Drive  
Danville, California 94526

Mrs. Peggy Buchorn  
Executive Director  
Citizens for Equitable  
Utilities, Inc.  
Route 1, Box 1684  
Brazoria, TX 77422

Brian Berwick, Esq.  
Assistant Attorney General  
for the State of Texas  
Environmental Protection  
Division  
P. O. Box 12548, Capitol Station  
Austin, TX 78711

William S. Jordan, III, Esq.  
Harmon, Weiss & Jordan  
2001 S Street, N.W.  
Washington, D.C. 20009

Kim Eastman, Co-coordinator  
Barbara A. Miller  
Pat Coy  
Citizens Concerned About  
Nuclear Power  
5106 Casa Oro  
San Antonio, TX 78233

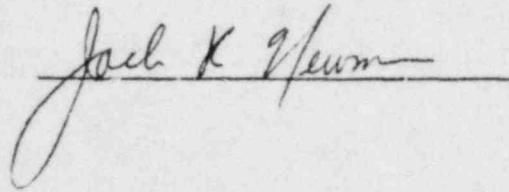
Lanny Sinkin  
114 W. 7th, Suite 220  
Austin, TX 78701

Robert G. Perlis, Esq.  
Office of the Executive Legal  
Director  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing Appeal  
Board  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Atomic Safety and Licensing Board  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Docketing and Service Section  
Office of the Secretary  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

A handwritten signature in cursive script, reading "Jack K. Newm", is written over a horizontal line.