

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of )  
 )  
HOUSTON LIGHTING & POWER )  
COMPANY, ET AL. )  
 )  
(South Texas Project, Units 1 )  
and 2 )

'84 AGO 15 P12:09

Docket Nos. 50-498 OL  
50-499 OL

DOCKETED  
BRANCH

APPLICANTS' RESPONSE TO CCANP, INC.,  
BRIEF ON APPEAL FROM PARTIAL INITIAL DECISION

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and through the City Public  
Service Board of the City of  
San Antonio, CENTRAL POWER AND  
LIGHT COMPANY, and CITY OF  
AUSTIN, TEXAS

Dated: August 13, 1984

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## I. INTRODUCTION

This brief is submitted on behalf of Houston Lighting & Power Company (HL&P) and the other participants in the South Texas Project (STP or Project) in response to Citizens Concerned About Nuclear Power, Inc. (CCANP) Brief on Appeal from Partial Initial Decision (July 8, 1984) (CCANP Brief) in the above-captioned proceeding. The Partial Initial Decision (PID or decision) from which CCANP appeals was issued by the Atomic Safety and Licensing Board (Licensing Board or Board) on March 14, 1984. That decision ruled upon various issues in the first phase (Phase I) of a proceeding established to determine whether HL&P and the other participants (Applicants) should be granted operating licenses for the STP.

Before describing the general history of this proceeding, it should be noted that the CCANP Brief is virtually devoid of citations to the record and relies, to a large extent, upon broad references to its proposed findings of fact and conclusions of law. This lack of specific record citation has hampered Applicants' attempts to respond to CCANP's brief, and is not in accord with Commission requirements. 10 C.F.R. § 2.762(d)(1). Such a brief "is of little value in appellate review." Union Electric Co. (Callaway Plant, Unit 1), ALAB-740,

18 NRC 343, 347 n.7 (1983); Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1) ALAB-424, 6 NRC 122, 126-27 (1977). 1/

Despite its deficiencies, Applicants have reviewed CCANP's brief carefully, and conclude that CCANP has failed to demonstrate that the Board erred in determining that HL&P has the competence and character to be granted operating licenses for the STP. On the contrary, the Board's decision is fully consistent with applicable legal authorities, and is thoroughly supported by the hearing record. For the reasons discussed below, CCANP's appeal should be denied.

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1/ It should also be noted that CCANP's brief includes an introduction and three appendices, resulting in nine pages in excess of the page limitation authorized by the Atomic Safety and Licensing Appeal Board (Appeal Board) in its June 12, 1984 Order. Applicants have not responded directly to CCANP's introduction (CCANP Brief, pp. i-iii), concluding that, for the most part, it raises irrelevant, immaterial and extra-record matters. Applicants believe that their responses to the other portions of CCANP's brief adequately address the few allegations CCANP's introduction raises regarding the Board's conduct of the proceeding. Applicants' responses to the various appendices in CCANP's brief are provided in the context of the discussions to which they appear to relate.

II. STATEMENT OF FACTS CONSTITUTING THE BACKGROUND FOR THIS APPEAL

Construction of the STP began soon after issuance of construction permits in December, 1975 to HL&P, acting for the owners as Project Manager. PID at 103. The initial decision authorizing the issuance of construction permits determined that HL&P had the necessary technical qualifications to be granted construction permits based in large part on the qualifications of Brown & Root, Inc. and Westinghouse Electric Corporation, the principal contractors on the Project. Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), LBP-75-71, 2 NRC 894, 911-14 (1975).

During the course of construction, the NRC Region IV office performed numerous investigations and routine inspections. PID at 127. On occasion, noncompliances were identified by the NRC inspectors and appropriate corrective action was taken by HL&P. Id. at 127-28. There were no escalated enforcement actions during the first four years of construction. Id. As of October 1979, HL&P management had reacted to the various problems it had detected in the progress of the Project by substantially increasing its involvement in the Project (see e.g., Oprea et al., ff. Tr. 1505, at 10-11 (Oprea); Murphy et al. (Contentions), ff. Tr. 6522, at 75, 84, 89-90 (Long); McKay and Logan, ff. Tr. 6227, at 9), and by directing its contractor, Brown & Root, to improve performance (Oprea et al., ff. Tr. 1505, at 14-15 (Oprea)).

Beginning in 1977, however, several NRC investigations and inspections focused on concerns relating to the morale of Brown & Root Quality Control (QC) Inspectors, confrontations between Brown & Root QC Inspectors and construction workers, and allegations of lack of managerial and technical support for the Brown & Root Inspectors. PID at 132; Oprea et al., ff. Tr. 1505, at 11-15 (Oprea). Both NRC and HL&P investigated. Although individual allegations could not generally be substantiated, (Seidle et al., ff. Tr. 9205, at 15-17, 23-25), HL&P and the NRC Staff recognized the need for improvement. HL&P's Quality Assurance (QA) Manager met with Brown & Root executive management to discuss the matter, and improvements in the interface between QA/QC and construction forces were subsequently detected. Oprea et al., ff. Tr. 1505, at 14 (Oprea). Additional improvement appeared to follow a mid-1978 meeting with NRC Region IV officials concerning similar problems. Id. at 15. HL&P believed there had been improvement and had received no contrary indication from the results of NRC inspections. Id. at 18; PID at 127-31; Staff Ex. 27, at 28.

But in November, 1979, after receiving new allegations bearing on the independence of QA/QC personnel, the NRC Office of Inspection and Enforcement (OIE) initiated a special investigation of the QA program at the STP, utilizing a multidisciplinary team drawn from four of the five NRC regional offices. This special investigation (designated investigation 79-19) identified 22 violations of NRC requirements, including a finding

that certain of the Brown & Root QC Inspectors lacked sufficient independence from cost and schedular influences, as evidenced by instances of harassment by construction personnel, lack of support from their own management and perceived production pressures. PID at 133-38.

Other noncompliances were found in the implementation of construction and QA activities. Id. Although the QA manuals and procedures were basically sound, it was apparent that there was a need for substantial improvement in the rigor with which those written requirements were being implemented. PID at 139. The investigators found no significant defects in the structures, but expressed concern that such defects might occur unless improvements were made in the execution of the QA program. Tr. 9957-60 (Shewmaker, Phillips, Hayes).

Upon being advised of the preliminary NRC investigative findings, HL&P promptly initiated corrective action and undertook a thorough independent audit of the Project QA program. E.g., Oprea et al., ff. Tr. 1505, at 19-23 (Oprea). Many corrective measures were completed or underway by April, 1980 when OIE documented the investigation results in a report and issued a Notice of Violation, a Notice of Proposed Imposition of Civil Penalty and an Order to Show Cause. Id.

HL&P responded to the enforcement actions positively, emphasizing its desire to identify and correct the root causes of the deficiencies. Project organizations and procedures were thoroughly reviewed and major changes were made in personnel,

organization and procedures. HL&P revised its management structure, reassigned key managers and staff, and recruited experienced personnel. Similar changes were made in the Brown & Root organization. Id. at 23-28; Broom and Vurpillat, ff. Tr. 3646, at 44-54 (Vurpillat).

As required by the Show Cause Order, HL&P conducted investigations of the adequacy of completed construction utilizing HL&P and Brown & Root personnel and panels of independent experts. Corrective actions were taken where necessary. All safety-related structures and earthwork were demonstrated to meet applicable requirements. Crossman et al., ff. Tr. 10010, at 36-43.

In September, 1981, HL&P announced that it was transferring the architect-engineer and construction management responsibilities from Brown & Root to Bechtel Energy Corporation (Bechtel). Subsequently, Brown & Root withdrew as constructor and was replaced with Ebasco Services, Inc. (Ebasco). PID at 4. Bechtel and Ebasco are both organizations with extensive experience and qualifications in the design and construction of commercial nuclear power plants. Id. at 220-21.

In mid-1979, CCANP and another intervenor group, Citizens For Equitable Utilities, Inc. (CEU), were admitted as parties to the proceeding and a number of contentions admitted as matters in controversy. Id. at 103-04. Among the contentions were allegations of various construction QA deficiencies. Id. at A-2 to A-4. The Board proposed to consider these allegations in

an early phase of the operating license hearing. Id. at 105. This suggestion was supported by the Applicants. Applicants' Response to ASLB Memorandum of March 10, 1980 (March 19, 1980). While the Board had the matter under advisement, CCANP requested a hearing on the Show Cause Order. PID at 105. In denying that request, the Commission directed the Board to consider, in its early phase of hearings, the broader ramifications of the QA issues as they reflected on HL&P's character and competence to operate the STP. Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), CLI-80-32, 12 NRC 281, 291-92 (1980) (CLI-80-32). The evident purpose of calling for the initiation of early hearings was to obtain, as promptly as possible, a ruling on whether HL&P would be disqualified from receiving operating licenses. Id.

In response to CLI 80-32, the Board admitted six issues (Issues A-F) for consideration in Phase I of the operating license hearing, in addition to the intervenors' contentions. 2/ PID at 105. The evidentiary hearing began on May 12, 1981 and continued intermittently until June 17, 1982. Id. at 107. The Board's March 14, 1984 decision concluded that prior deficiencies in the STP QA program were not traceable to "character defects on the part of HL&P" and that the "changes effectuated by HL&P... should result in upgraded QA/QC performance at STP." Id. at 99. The Board also found (subject to the outcome of future phases of

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2/ Issues A-E are reproduced in Appendix A to the PID. Eventually, consideration of Issue F was deferred to a later phase of the hearing. PID at 106-107.



the hearing), that there is "reasonable assurance that structures which are complete and work which has been performed comply with applicable regulatory requirements, and that future work activities (including implementation of the QA/QC program for construction) will be carried out satisfactorily." Id. at 101-102.

Thus, it concluded that "there is now reasonable assurance that HL&P will have the necessary managerial competence and character (including commitment to safety) to operate the STP safely and in compliance with all applicable NRC requirements." Id. at 285.

III. THE BOARD PROPERLY CONCLUDED THAT HL&P HAS THE NECESSARY CHARACTER AND COMPETENCE TO BE GRANTED OPERATING LICENSES FOR THE STP.

Sections I-IV of CCANP's brief are a largely unfocused challenge to various aspects of the Board's determinations concerning the character and competence issues under Issue A.

This section of Applicants' response first addresses the legal issue Applicants consider to be fundamental to CCANP's appeal: whether the Board was correct in considering HL&P's remedial measures and other improvements in HL&P's management of STP in reaching its ultimate conclusions regarding its qualifications to be granted operating licenses, or whether the Board should have made its decision based solely upon deficiencies in HL&P's past record. Applicants believe this issue underlies much of CCANP's brief 3/ and therefore should be disposed of at the outset.

Thereafter, this section addresses the other principal arguments in sections I-IV of CCANP's brief.

A. The Board Properly Decided To Consider The Totality Of Circumstances In Evaluating HL&P's Character and Competence.

CCANP argues that CLI-80-32 required the Board to utilize a two step process to judge HL&P's character and competence. CCANP Brief at 1-3, 11-12. According to CCANP, the Board was required to first determine whether certain incidents of noncompliance constituted "independent and sufficient" grounds

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3/ See e.g., CCANP Brief at 1-3, 5-6, 11-12, 54.

for license denial. If the Board found that no such grounds existed, only then according to CCANP, would it be required to consider the adequacy of HL&P's corrective actions. Id. Thus, if the Board found, without considering such corrective actions, that HL&P's record of compliance with NRC requirements was sufficiently poor to merit an adverse finding on character or competence, in CCANP's view, the license should be denied without any inquiry into HL&P's corrective measures. 4/ Applicants, as did the Board, find this argument unsupported by logic, the numerous NRC/AEC precedents, relevant judicial and administrative authority or CLI-80-32.

CCANP's position 5/ and the contrary views of Applicants and the NRC Staff were addressed extensively in prehearing briefs and in the proposed findings of fact and conclusions of law submitted by the parties. See PID at 7-8. After consideration of these arguments, the Board stated that

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4/ The Board found that HL&P's record, even without consideration of corrective measures, would not justify denial of operating licenses. PID at 178-83. This fact would render moot the issue of law addressed in this portion of Applicants' response were it not for the fact that CCANP has also appealed from the Board's findings on that issue, as discussed below.

5/ As part of its argument, CCANP seeks to incorporate by reference "all of the concerns and supportive material presented in CCANP's Notice of Appeal and Request for Directed Certification (March 22, 1981) . . . ." CCANP Brief at 3-4. Although such an effort to evade the page limitation on briefs should be rejected (cf. Toledo Edison Co. (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-430, 6 NRC 457, 458 (1977)), if the Appeal Board chooses to examine this document, it should also be aware of Applicants' response dated April 9, 1981.

"CLI-80-32 contemplated a determination whether past practices, in themselves, should result in a denial of the operating license application. . .," but concluded that "the Commission. . . contemplated that [the Board] explore the totality of the Applicants' performance, including matters which may mitigate the significance of adverse findings concerning prior practices." PID at 21; Second Prehearing Conference Order (December 2, 1980) at 4-5. The Board's analysis is fully consistent with the Commission's instructions in CLI-80-32 and applicable precedent.

The Commission, in CLI-80-32, stated that "[e]ither abdication of responsibility or abdication of knowledge . . . could form an independent and sufficient basis for . . . denying a license application on grounds of lack of competence (i.e., technical) or character qualification on the part of the . . . license applicant." 12 NRC at 291. Obviously what the Commission meant -- and CCANP refuses to acknowledge -- is that past conduct might be so egregious that it could provide a basis for license denial without need for finding any additional causes for denial (i.e., such conduct could by itself be "an independent and sufficient basis"). There is no indication, however, that the Commission intended that in evaluating such past conduct other relevant circumstances, such as related remedial actions, could be treated as if they did not exist. Such an intent by the Commission cannot reasonably be inferred, particularly since it would be wholly contrary to both logic and precedent in federal agency practice.

Recently, the Appeal Board adverted to the Commission's reference to "independent and sufficient" grounds for license denial in assessing the character and competence of another NRC licensee. Metropolitan Edison Co. (Three Mile Island Nuclear Generating Station, Unit 1), ALAB-772, \_\_\_ NRC \_\_\_, slip op. at 13 (May 24, 1984). The Appeal Board there concluded that "[t]he efficacy of action intended to remedy identified deficiencies in past conduct is a necessary element in" determining whether the licensee has "demonstrated its ability to operate TMI-1 in a safe and responsible manner in the future." 6/ Id. at 62.

Furthermore, the cases cited by the Commission (both in the Memorandum and Order itself 7/ and in the statements of additional views 8/), as well as the established body of case law involving the NRC and AEC, 9/ FCC, 10/ ICC and CAB, 11/ uniformly

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6/ That conclusion is consistent with Commissioner Bernthal's articulation of the Commission's principal responsibility in the TMI-1 restart proceeding: "to ask and answer this single question: Can the current personnel of the reorganized General Public Utilities nuclear division be expected to operate TMI-1 consistent with the NRC's standards and regulations providing for the public health and safety." Tentative Commission Views and Plan for Resolution of Management Integrity Issues Prior to Restart (January 27, 1984), Additional Views of Commissioner Bernthal (revised) (January 30, 1984) at 2 (emphasis added).

7/ FCC v. WOKO, 329 U.S. 223 (1946); Leflore Broadcasting Co. v. FCC, 636 F.2d 454 (D.C. Cir. 1980); Virginia Electric and Power Co. v. NRC, 571 F.2d 1289 (4th Cir. 1978).

8/ Cosmopolitan Broadcasting Co. v. FCC, 581 F.2d 917 (D.C. Cir. 1978); United Broadcasting Co. v. FCC, 565 F.2d 699 (D.C. Cir. 1977), cert. denied, 434 U.S. 1046 (1978), affirming per curiam Applications of United Television Co. (WFAN-TV) 55 FCC 2d 416 (1975).

9/ E.g., Virginia Electric and Power Co. (North Anna Nuclear

hold that in assessing character and competence, the totality of the relevant circumstances must be considered in order to predict whether an applicant will in the future meet the standards imposed by the regulatory authority. 12/ Those circumstances include not only the nature and extent of past violations, but also: whether the licensee undertook extensive measures to

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Power Station, Units 1 and 2), LBP-77-68, 6 NRC 1127 (1977), reaffirmed, LBP-78-10, 7 NRC 295, affirmed, ALAB-491, 8 NRC 245 (1978); Commonwealth Edison Co. (Zion Station, Units 1 and 2), LBP-73-35, 6 AEC 861 (1973), affirmed, ALAB-226, 8 AEC 381 (1974); Consolidated Edison Co. (Indian Point Station, Unit 2), ALAB-188, 7 AEC 323 (1974); Duquesne Light Co. (Beaver Valley Power Station, Unit 1), LBP-76-3, 3 NRC 44, modified, LBP-76-23, 3 NRC 711 (1976), affirmed, ALAB-408, 5 NRC 1383 (1977). See also, the Decision on the Hearing on Order to Show Cause in Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-74-71, 8 AEC 584 (1974), affirmed in pertinent part, ALAB-283, 2 NRC 11 (1975).

10/ FCC v. WOKO, 329 U.S. 223; Leflore Broadcasting Co., 636 F.2d 454; Cosmopolitan Broadcasting Co., 581 F.2d 917; United Broadcasting Co., 565 F.2d 699; Applications of RKO, General, Inc. (WNAC-V), 78 FCC 2d 1 (1980), aff'd in pertinent part, RKO, General, Inc. v. FCC, 670 F.2d 215 (D.C. Cir. 1981).

11/ Tennessee Cartage Co., Extension - Georgia, 128 M.C.C. 819, 821 (1978); Johnny Brown's, Inc., Extension - Winchester, Va., 111 M.C.C. 905 (1970). The CAB's practice is in accord. E.g., Great Lakes Airlines, Inc. v. CAB, 294 F.2d 217 (D.C. Cir. 1961); Transatlantic Route Proceeding and Supplemental Renewal Proceeding, 72 C.A.B. 216 (1977); Capitol Airways, Inc., Interim Certificate, 37 C.A.B. 82 (1962).

12/ Character and competence are also issues in licensing proceedings before the FCC. In fact, as the Commission noted in the statements of additional views in CLI-80-32, the Communications Act formed part of the model for the Atomic Energy Act. 12 NRC at 294 n.1. Similarly, the ICC and CAB also assess the "fitness" of applicants for permits to engage in regulated activities having safety and public interest implications.

remedy underlying problems and "root causes," 13/ whether the licensee recognized the need to improve its performance and did not attempt to raise obstacles to correcting deficiencies, 14/ and whether the licensee undertook prompt and effective corrective action. 15/ As the ICC in Miller Transfer and Rigging Co. Extension of Metal Lathes, 125 M.C.C. 538, 543-44 (1976), aptly summarized:

The determination as to whether an applicant has sustained its burden of establishing its fitness must be made upon a full consideration of the nature and extent of the violations committed by applicant, the mitigating circumstances, if any, shown to exist and to have existed, whether applicant's conduct represents a flagrant and persistent disregard of the provisions of the act and of its certificates, whether applicant has made a sincere effort to correct past mistakes, whether applicant is willing and able to comport in the future with the statute and the applicable rules and regulations of the Commission.

Applicants are, in fact, aware of no case in which a failure to consider the total situation, including an applicant's remedial measures and mitigating factors, has been upheld by the courts.

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13/ See, e.g., North Anna, 6 NRC at 1153-1154; Beaver Valley, 3 NRC at 50-51; Zion, 6 AEC at 892-893; Indian Point, 7 AEC at 335; Midland, 8 AEC at 599-600.

14/ See, e.g., Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), LBP-79-19, 10 NRC 37, 51 (1979); North Anna, 6 NRC at 1136; Zion, 6 AEC at 898-899; Consolidated Edison Co. (Indian Point Station, Unit 2), LBP-73-33, 6 AEC 751, 756 (1973).

15/ See, e.g., North Anna, 6 NRC at 1139, 1146; Zion, 6 AEC at 898; Indian Point, 7 AEC at 336; Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-128, 6 AEC 399, 407 (1973); Beaver Valley, 3 NRC at 49.

In CLI-80-32 the Commission did not adopt a standard inconsistent with this established body of authority. Instead, it directed "the Board to look at the broader ramifications of these charges in order to determine whether, if proved, they should result in denial of the operating license application." 12 NRC at 291-92 (emphasis added). Thus the Commission made clear that the Board was to evaluate all of the circumstances relevant to an informed decision on the issues before it, without artificial limitations on its inquiry.

Reflecting this analysis of the law, the Board admitted a series of issues to be considered in this first phase of the hearing. Issues A, B, C, and D, taken together, address the character and competence questions. <sup>16/</sup> Issues A and B focus on HL&P's compliance record, including the findings of the 79-19 investigation and HL&P's response thereto. Issues C and D are the ultimate questions regarding HL&P's qualifications to operate STP and to complete construction, respectively.

CCANP's appeal, however, concentrates on Issue A, addresses Issue B only to a limited extent, and ignores Issues C and D entirely. In failing to address on appeal the substantial record regarding remedial measures taken by HL&P, as well as its current programs and organizations (see PID at 184-222), CCANP implicitly concedes that the Board was substantially correct in

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<sup>16/</sup> In its decision, the Board made clear that it did not view Issue A as necessarily dispositive of HL&P's character and competence, stating that "questions concerning HL&P's character and competence permeate Issues A, B, C and D derived from CLI-80-32." PID at 7.



its findings regarding such remedial measures (Issue B) and the adequacy of HL&P's current programs and organization for completion of construction (Issue D) and operation of STP (Issue C).

Since the Board's ultimate conclusions regarding HL&P's character and competence are based in part upon its findings regarding Issues A and B, it is still necessary to resolve the alleged errors relating thereto presented by the CCANP appeal. However, in considering the merits of CCANP's positions and whether specific Board rulings, even if in error, were truly harmful to CCANP, it is important to keep in mind that CCANP's appeal focuses on only a portion of the record weighed by the Board in reaching its decision. As a matter of law and, we believe, the Commission's mandate, a balancing of that entire record is necessary to review the Board's ultimate conclusions on the character and competence questions.

B. The Board Properly Interpreted Issue A  
And Made Appropriate Findings Thereunder.

When read as a whole, section I of CCANP's brief appears to present two basic arguments. The first is that in framing the issues the Board misunderstood the Commission's directive in CLI-80-32 and improperly failed to consider past nonconformances as determinative of character and competence, apart from other relevant circumstances, including remedial actions. CCANP Brief at 1-4, 11-12. This, of course, is precisely the basic question of law which Applicants have responded to in section III.A., supra.

CCANP's second argument deals with the Board's specific determinations with respect to Issue A. The main thrust of this argument appears to be that the Board misinterpreted and confused Issue A in a number of specific respects and did not make an explicit determination on that issue. CCANP Brief at 4-11. These points are dealt with below.

1. Consideration Of Qualifications  
To Complete Construction

CCANP argues that the Board improperly considered under Issue A, HL&P's character and competence to build the STP, as well as to operate it, thereby confusing the issues before it. CCANP Brief at 4-5. CCANP appears to be arguing that the Board should not have admitted Issue D (relating to whether there is reasonable assurance that HL&P will complete construction of STP in accordance with the construction permits), because it addresses a construction permit issue that is not appropriate for consideration in an operating license proceeding. CCANP is simply wrong.

Under the provisions of 10 C.F.R. § 50.57(a)(1), satisfaction of construction requirements is an appropriate part of the operating license determination. Moreover, Issue D is a logical outgrowth of the concerns expressed in CLI-80-32 and the other matters referenced in Issues A and B. Certainly, in light of the 79-19 investigative results, the Board was properly seeking to determine at as early a date as possible whether

additional corrective measures relating to HL&P's programs and organization would be necessary to assure the adequacy of continued construction. Cf., Memorandum (March 10, 1980), at 2.

Furthermore, CCANP appears to suggest that by looking at "current conditions" (equating those with the current status of construction activities), the Board, in effect, contaminated what should have been an otherwise "pure" determination on character and competence based solely upon past behavior. That argument is without merit for the reasons described in section III.A., supra.

CCANP's related argument is that the Board's consideration of Issue D confused its consideration of Issues A and B. However, as is evident from the PID, factual findings were made on Issue D specifically (PID at 209-22) and it was addressed separately from the determinations on Issues A and B in the Board's opinion (PID at 60-62). Thus, the Board's consideration of Issue D in no way hampered its consideration of Issues A and B.

2. Consideration Of Remedial Measures Under Issue A

Next, CCANP criticizes the Board's consideration of remedial measures, alleging, inter alia, that the Board failed to consider "past behavior" standing alone and improperly focused on current conditions, thus "effectively abolish[ing] Issue A" and failing "to address" that Issue. CCANP Brief at 5-6. To the extent that CCANP is merely reiterating its basic point that, as

a matter of law, the Board should not have considered remedial measures at all, that point was addressed in section III.A., supra.

To the extent that CCANP is arguing that the Board did not rule on Issue A and that consideration of remedial measures confused its determination on that issue, it is CCANP which is confused. The portions of the Board's decision quoted at pages 5-6 of the CCANP Brief (PID at 22-23) relate to its discussion of the ultimate conclusions it was required to reach (which, of course, would require consideration of remedial measures), and not to Issue A alone. Obviously, the Board did address Issue A separately at length in its opinion (PID at 30-51) and reached specific findings and conclusions concerning that Issue (PID at 107-83).

CCANP then argues that the Board misinterpreted (or modified) Issue A by considering, in the context of that issue, the fact that remedial measures were taken, the manner in which HL&P "reacted" to the noncompliances, and the degree to which HL&P "attempted" to stay informed. CCANP Brief at 9-11. CCANP also refers to a number of places in the Board's discussion of Issue A where remedial measures are mentioned, and argues that such discussion demonstrates that the Board did not truly rule on Issue A and, in fact, confused it with matters relevant only to Issue B. Id. at 10-11, Appendix III. Those assertions are in error.

The Board evaluated HL&P's conduct in a rational and comprehensive fashion while still maintaining an appropriate distinction between Issues A and B. It considered pursuant to Issue B, whether HL&P had improved its performance (by there taking into account the effectiveness of remedial steps), but also recognized that in considering HL&P's record of past performance (under Issue A), it could not ignore the fact that contemporaneous corrective measures had been taken. In any attempt to determine the significance of an applicant's past conduct, it would be unrealistic, if not impossible, to evaluate such conduct without considering contemporaneous actions of the applicant, such as its acknowledgement of responsibility or its undertaking of corrective steps.<sup>17/</sup>

Furthermore, the Board clearly weighed the number, severity and significance of past violations (PID at 118-19, 127-39, 142-46), HL&P's record of candor and honesty in its dealings with the NRC (PID at 31-38, 108-118), the extent to which HL&P abdicated its responsibilities to Brown & Root (PID at 155-61) and the extent to which HL&P kept itself knowledgeable about QA/QC activities (PID at 161-64). These are precisely the matters raised by Issue A.

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<sup>17/</sup> Moreover, when evaluating conduct of an applicant over a period of time, remedial steps taken in response to early problems are, of course, an inextricable part of the entire past history.

Although it was necessary in some cases for the Board to describe the testimony regarding remedial measures to properly address the significance of deficiencies, a fair reading of the PID shows that the Board appropriately discriminated between evidence relevant to each issue. 18/

In short, CCANP's criticisms of the Board's interpretation of Issue A are based in large measure upon its own misinterpretation of the Board's decision. That decision neither failed to consider the significance of past acts nor improperly altered the focus or scope of Issue A.

C. The Board Properly Concluded That  
HL&P's Past Record Does Not Preclude  
A Determination That HL&P Has The  
Necessary Competence.

The heading of section II of CCANP's brief ("Competence") implies that CCANP intends to challenge the Board's overall determination that HL&P did not lack the requisite competence to be granted operating licenses for STP. However, it is apparent from the context of section II in the brief and the limited points raised by CCANP therein, that section II is simply a continuation of CCANP's basic argument

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18/ CCANP also argues that the Board found that only "immutable" character defects could independently support a license denial. CCANP Brief at 7-9. The Board reached no such judgment. When read in context, it is evident that the Board's discussion of immutable character defects (PID at 21-23) did not reflect a Board conclusion that character defects which can be remedied, regardless of their seriousness or whether they have in fact been resolved, cannot result in license denials. See PID at 21-23.

that, under Issue A, HL&P should have been found lacking in competence on the basis of its record prior to the 79-19 investigation, without regard to remedial actions.

Although we respond here only to CCANP's specific arguments regarding Issue A, it should be remembered that CCANP has basically left unchallenged the Board's explicit determinations under Issues B, C, and D which, together, provide the basis for the Board's ultimate favorable conclusions on competence.

In section II, CCANP first argues that the Board erred in considering HL&P's "managerial competence" when CLI-80-32 referred to "technical" competence (CCANP Brief at 12-13). 19/ CCANP's attack on the Board's consideration of managerial competence is particularly confusing in light of the fact that the main thrust of its argument on appeal (and, indeed at the hearings) focused on managerial rather than technical competence. In any event, the Board's consideration of HL&P's managerial competence was appropriate in light of CLI-80-32, and CCANP could not have been "caught off guard" by the Board's inquiry into this area, since Issue A explicitly addressed managerial competence. 20/

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19/ At pages 14-16 CCANP also argues that deficiencies in HL&P's competence prior to the 79-19 investigation reflect adversely on HL&P's character. That argument is addressed in the discussion of "inexperience" at 47, infra.

20/ Applicants do not recall CCANP raising any objection to the use of the term "managerial competence" in Issue A either at the November 19, 1980 prehearing conference (where the issue was formulated) or thereafter.

CCANP then argues that HL&P violated the Board's standards of competence "far more pervasively than the ASLB concluded" and that such "level of incompetence" required denial of the license. CCANP Brief at 13-14. Although CCANP refers to the Board's "measurement of competence" at pages 46-47 of the PID, its brief mischaracterizes deficiencies identified by the Board and wholly ignores the positive Board findings regarding HL&P's managerial and technical competence even prior to the 79-19 investigation. 21/ The Board's determination that the extent and nature of these deficiencies were not sufficient to warrant denial of the license was supported by the record and CCANP does not identify any evidence that the Board failed to consider. 22/

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21/ For example, the Board found that HL&P employed many talented individuals with adequate or more than adequate technical expertise (PID at 47), that there were appropriate efforts to correct nonconforming conditions arising prior to the 79-19 investigation (id. at 128), that the QA/QC staff was enlarged to the point of being excessive (id. at 39) and that each of the reported incidents of harassment was investigated and that steps were taken to settle disputes between Brown & Root QC Inspectors and construction personnel (id. at 265-75).

22/ CCANP's only criticism of the Board's factual findings is its disagreement with the Board's statement that "[n]o party has raised any question" regarding the adequacy of the STP written QA program. CCANP Brief at 13 n.4. CCANP's criticism is wrong and its reliance on its proposed findings is misplaced. The proposed finding cited by CCANP did not question the adequacy of the written QA program, nor was there any basis in the record for it to do so.



Instead, CCANP argues that the Board should have used a more demanding standard, but fails to suggest any alternative test for determining a licensee's competence and provides no basis for questioning the Board's conclusions. 23/ In short, CCANP simply seeks a different result.

To the extent that CCANP is contending that the existence of any deficiencies in a licensee's performance compels the conclusion that the licensee is not qualified, that contention is wrong as a matter of law. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-756, 18 NRC 1340, 1344-45 (1983); Union Electric Co., (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 345-46 (1983). Clearly, it was incumbent upon the Board to weigh the significance of the deficiencies, as it did. The result of this weighing was that "HL&P's past questionable competence was not of such magnitude as to preclude the eventual award of operating licenses." PID at 51.

The Board's conclusion is supported by the record. As it recognized, "not one witness expressed the view that the past record of HL&P demonstrated that its managerial competence was inadequate to receive operating licenses. To the contrary, those witnesses expressing a view on the subject concluded that, even

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23/ To the same effect is Appendix 2 to CCANP's brief, which is merely a chart form of CCANP's argument that whatever standard is applied, it should be one that denies a license to Applicants.

without considering the remedial actions . . . HL&P did have the required competence." PID at 180-81. CCANP has pointed to no fact inconsistent with that finding.

D. The Board Properly Concluded That HL&P Has The Necessary Character.

In response to CCANP's discussion of character in section IV of its brief, we first address collectively subsections A, B and E in which CCANP criticizes the Board's analysis of the relevant legal standards and proposes its own definition of character. We then respond to CCANP's allegations in subsections D and F that the factual record regarding HL&P's honesty and candor, noncompliances, and alleged abdication of responsibility and knowledge warrants an adverse character determination. 24/

1. The Board Considered The Relevant Indicators Of Character.

In its proposed findings, CCANP urged the Board to make separate determinations regarding each of six character "traits." 25/ CCANP contends that the Board should assess HL&P's

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24/ In subsection C, CCANP implies that the Board subverted Issue A by considering only "the manner in which HL&P reacted to noncompliances . . ." and the degree to which it "attempted to stay informed . . .," rather than the significance of the noncompliances themselves or the degree to which HL&P did not remain informed regarding Project developments. CCANP Brief at 27. This is essentially the same argument raised at pages 9-11 of CCANP's brief. As is demonstrated at 20 supra, the Board did consider these matters and properly interpreted Issue A.

25/ CCANP Proposed Findings of Facts and Conclusions of Law (September 20, 1982) at 3-4, 12 (CCANP Proposed Findings).

character by making separate determinations regarding its "foresight," judgment," "perception," "resolve," "integrity," and "values." CCANP Brief at 24-26, 37-38. CCANP argues that the Board's failure to make separate determinations on these six "traits" was in error. Id. at 39-40. Applicants' view is that to the extent such "traits" are generally accepted indicators of character they are reflected in the Board's judgment, but that the list invented by CCANP is not a "catechism" reflected in any body of accepted law.

In evaluating HL&P's character, the Board concluded that it must consider those traits, or aspects of HL&P's performance, which "evince a willingness and propensity, or lack thereof . . . to observe the Commission's health and safety standards." PID at 15-16. Consistent with the approach utilized by other NRC licensing boards (PID at 20, nn. 25, 26), the Board concluded that it would "adjudge HL&P's character by consideration of its past and present performance, and [would] consider those traits, both positive and negative, that are rationally inferred therefrom." Id. at 19. In particular, the Board considered "HL&P's record of compliance with the NRC regulations; its response to noncompliances; and, most importantly, whether HL&P made material false statements or omissions and whether it

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Although all parties submitted prehearing briefs on the legal standards governing character, prior to CCANP's proposed findings, CCANP's six "traits" had not been identified in such terms by any party. Accordingly, none of the testimony was structured to specifically address these six "traits."

addressed questions propounded by the Staff, the parties and [the Board] with candor." 26/ Id. at 19-20 (footnotes omitted). That approach is clearly in accord with applicable authority. E.g., Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-106, 6 AEC 182, 184 (1973).

NRC and AEC decisions addressing the character of applicants have considered the number and significance of past non-compliances, 27/ whether alleged false statements were in fact false, material and deliberate, 28/ whether the licensee was open and candid with the agency, 29/ the extent to which the licensee abdicated its responsibility or knowledge to its contractors, 30/ and the adequacy of measures taken to correct past deficiencies. 31/ These were the factors considered by the Board.

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26/ The Board's decision also plainly reflects its consideration of the extent to which HL&P abdicated responsibility and knowledge in assessing HL&P's character. See 20, supra.

27/ See, e.g., North Anna, 6 NRC at 1141; Shearon Harris, 10 NRC at 42.

28/ See, e.g., North Anna, 6 NRC at 1144; Virginia Electric Power Co. (North Anna Nuclear Power Station, Units 1 and 2), CLI-76-22, 4 NRC 460, 492 n.12 (1976).

29/ See, e.g., North Anna, 6 NRC at 1144-1145; North Anna, 4 NRC at 490-491; Compare Hamlin Testing Laboratories, 2 AEC 423 (1964); Coastwise Marine Disposal, 1 AEC 481 (1960).

30/ See, e.g., North Anna, 6 NRC at 1150-51; Beaver Valley, 3 NRC at 49.

31/ See, e.g., Three Mile Island, ALAB-772, slip op. at 62; North Anna, 6 NRC at 1139, 1146; Zion, 6 AEC at 898; Indian Point, 7 AEC at 336; McGuire, 6 AEC at 407; Beaver Valley, 3 NRC at 49.

CCANP argues, however, that this proceeding "is the first in NRC history to directly address the statutory issue of character," and attempts to distinguish pertinent NRC decisions by asserting that "cases examining a lesser concept or a subpart of the general concept [of character] are not appropriate precedents. . ." CCANP Brief at 22-23.

Contrary to CCANP's position, the issues before the Board were not matters of first impression. There is no merit to CCANP's attempt to distinguish the cases by suggesting that they did not evaluate every possible aspect of an applicant's character. Many of these cases evaluated the character of a licensee or applicant considering all or many of the elements considered in this case. See e.g., North Anna, 6 NRC 1127. Moreover, cases which examine one or more factors relevant to character provide useful precedent in this proceeding.

The major thrust of CCANP's disagreement with the Board, however, seems to be its assertion that the Board erred in not adopting CCANP's "empirical" definition of character as discussed above. CCANP Brief at 25. 32/

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32/ CCANP also argues that the Board erred in considering only those character traits which have a "nexus" to nuclear safety. CCANP Brief at 23-24. This assertion can be disposed of summarily. Requiring some "nexus" between the facts evaluated and the purpose of that evaluation (i.e., to determine if there is reasonable assurance that the applicant can and will meet applicable regulatory requirements) is not only reasonable, but fully consistent with the health and safety determinations which must be made prior to issuance of an operating license. See, 10 C.F.R. § 50.57. Indeed, CCANP contends that it provided such a nexus for the factors it urged the Board to consider in its proposed findings of fact. CCANP Brief at 25. Thus, CCANP

In rejecting CCANP's approach, the Board properly concluded that while the six "traits" are "generally relevant to character", they are "so broad and ill-defined that analyzing them would give little assistance in providing answers to the questions raised by CLI-80-32," and would merely "replace one label, 'character', with many; it would leave unresolved the factors determinative of each trait." 33/ CCANP argues primarily that if each trait "is not enumerated, there is a possibility that there would be no inquiry as to the presence or absence of that trait." CCANP Brief at 24. Thus, CCANP is apparently concerned that relevant evidence has been ignored. Indeed, CCANP alleges that the "refusal of the ASLB to accept any fixed definition of character led it to ignore evidence that HL&P is wanting on several important elements of character." Id. at 26. However, no overlooked evidence is cited.

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seems to have no real quarrel with the Board's requirement of such a nexus.

33/ CCANP also mischaracterizes the Board's comment that "in applying the facts of record to determine whether HL&P possesses the requisite character, CCANP has utilized many of the same incidents or events as examples of several of the traits it enumerates." CCANP Brief at 40. While CCANP, reasons from this statement that the Board "rejected [its] analytical framework" because it "demonstrated more than one character trait by a single incident . . ." (id.), it is obvious from reading the statement in context that the Board merely intended to illustrate the "broad and ill-defined" nature of CCANP's analysis, and not to suggest that one incident or event may not be probative of several character traits. PID at 18-19.

The analysis of character urged by CCANP is unsupported by legal authority. To the extent that it argues that error may be found in the Board's treatment of the facts, its brief is devoid of record references to evidence which the Board allegedly ignored or misinterpreted.

2. The Board Properly Determined That  
HL&P Has The Necessary Character  
Qualifications.

In evaluating HL&P's character the Board considered, in accordance with Issue A, the record regarding: HL&P's honesty and candor, noncompliances identified at STP, the extent to which HL&P abdicated responsibility to Brown & Root, and the extent to which HL&P failed to keep itself knowledgeable regarding construction activities. PID at 107-83. CCANP challenges the Board's decision on each of these points. As will be described below, the Board's findings are fully supported by the record.

a. HL&P Demonstrated Honesty And Candor  
In Its Relations With The Board,  
The NRC Staff, And The Parties To The  
Proceeding.

In challenging the Board's findings on HL&P's honesty and candor, CCANP points first to the alleged false statements in the FSAR. Apparently conceding that any inconsistencies between the FSAR statements and actual practice at STP were not deliberate, it asserts that the Board failed to consider whether such statements, nevertheless, reflected carelessness on HL&P's part. CCANP Brief at 28.

The record demonstrates that the FSAR sections at issue were prepared in a careful and systematic manner (Pettersson and White, ff. Tr. 6162, at 5-7), and were true when filed (id. at 9-12, 15; Crossman et al., ff. Tr. 10010, at 12; Tr. 9862-63 (Shewmaker); Tr. 6188-91, 6208-10, 6216-17 (Pettersson, White). While, in field application, there were instances of failure to conform to the procedures described in the FSAR, those discrepancies would be more aptly characterized as nonconformances with applicable procedures than as false statements. Pettersson and White, ff. Tr. 6162, at 12, 15; Tr. 6188-91, 6205, 6208-10, 6216 (Pettersson, White); Crossman et al., ff. Tr. 10010, at 12; Tr. 10040 (Tapia). The Board properly took note of this evidence. PID at 108-118.

CCANP next criticizes Bechtel's assessment of alternative QA organizations. 34/ It alleges that the study was "a deception," and that HL&P improperly placed "limitations" on Bechtel's freedom to conduct the study. CCANP Brief at 28.

CCANP's brief fails to specify how HL&P allegedly limited Bechtel's freedom in conducting the study. 35/ The

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34/ Item 1 of the Show Cause Order required HL&P to commission "an experienced, independent management consultant" to conduct a review of HL&P's QA program management, in order to evaluate whether program management was "adequate to exercise full control over all aspects of the South Texas Project." Staff Ex. 46, at 12. The independent consultant was to consider, at a minimum, five alternative organizational structures as set forth in the Show Cause Order. Id. at 13.

35/ CCANP's proposed findings of fact contained a number of unsupported allegations of improper limitations on the Bechtel study. CCANP Proposed Findings at 100-108. HL&P



report prepared by Bechtel, as well as the testimony of record, explicitly describes the various alternative QA organizations evaluated and the bases for selection from among those alternatives. Staff Ex. 48, Attachment 1, Ex. 1 at A-1 to A-16; Oprea et al., ff. Tr. 1505, at 32-36 (Oprea), 120-125 (Amaral); Tr. 1911-12 (Amaral). No suggestion of deception or improper limitation can be inferred from the record and the Board properly found that CCANP's allegations regarding the Bechtel study were "based on statements taken out of context and, in fact, amount to a distortion of the record when viewed as a whole." PID at 35.

CCANP next impugns the veracity of Mr. Oprea, HL&P's Executive Vice President, alleging that he filed a false sworn statement, by referring to the Board's finding that "certain details" of the Applicants' Show Cause Order response "may not have been completely accurate . . . ." CCANP Brief at 29. This assertion apparently relates to allegations in CCANP's proposed findings regarding HL&P's statements that the HL&P and Brown & Root audit staffs had been upgraded "through increases in manpower . . . ." and that Brown & Root would increase the number of resident site auditors. See CCANP Proposed Findings at 108-09.

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responded to each of those allegations in its reply findings. Applicants' Reply to Proposed Findings of Fact and Conclusions of Law Submitted by the Other Parties (October 18, 1982) at 53-61.

In an inspection report subsequent to Applicants' Show Cause Order response, OIE found that there had been attrition in the Brown & Root site audit group and "[did] not concur with [HL&P's] response . . . ." Staff Ex. 64, at 4. The Staff did not further explain the basis for this statement, but it did find that "progress ha[d] been made" in fulfilling HL&P's commitments to improve its auditing performance, and issued no notice of violation regarding audit staff size. Id. at 5. The Staff did not suggest that HL&P's response constituted a false statement (id.) and it is not apparent which statement CCANP contends to have been false. The OIE report merely shows that the additions had not yet been achieved. HL&P's commitment to increase the size of the Brown & Root site audit staff was, in fact, later fulfilled. Staff Ex. 71, at 14; Oprea et al., ff. Tr. 1505, at 74 (Briskin), 114 (Frazar) and attachment 1 at M-7, M-1; Tr. 1831 (Frazar). Thus, the record showed no false statement and no intent to deceive the Commission. Accordingly, the Board correctly concluded that the statements in the inspection report did not reflect adversely on HL&P's character. PID at 36-37.

In a later portion of its brief (subsection IV. F), 36/

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36/ In this same portion of its brief, CCANP also argues that the Board improperly praised HL&P for candor in its relationship with CEU, asserting that "[a]ny openness and candor" by HL&P was "irrelevant to" CEU's withdrawal from the proceeding. CCANP Brief at 41. Regardless of the extent to which HL&P's candor resulted in CEU's withdrawal (a question which is obviously irrelevant), CCANP fails to contradict the Board's factual finding that HL&P demonstrated openness and candor in its "willingness to have a CEU representative participate in an annual independent audit of the STP QA/QC program . . . ." PID at 34, 45-46.

CCANP raises another unsubstantiated allegation regarding Mr. Oprea. CCANP Brief at 41. It alleges that he testified that the 79-19 findings were only "minor" problems, apparently suggesting that Mr. Oprea attempted to minimize the seriousness of those findings. Contrary to CCANP's suggestion, Mr. Oprea testified that "[r]ather than dealing with twenty-two separate and apparently unrelated . . . [violations] many of which were relatively minor, we were able, with insight gained from the Bechtel study, to address causes rather than symptoms . . . ." Oprea et al., ff. Tr. 1505, at 19 (Oprea). He also testified that after consultation with the NRC Staff prior to issuance of the 79-19 Investigation Report, HL&P stopped placement of safety-related concrete (id. at 20); that those consultations "forewarned [him] of the seriousness of the findings" (id. at 21); and that both he and Mr. Jordan (then HL&P's President) "recognized the seriousness of the findings" and saw to it that HL&P's Board of Directors were appropriately informed. Id. at 24-25. See also, id. at 50 (Oprea); Tr. 5292-96 (Oprea); Tr. 5323-27 (Oprea).

CCANP also alleges that Mr. Jordan testified inconsistently regarding the reasons for assigning Mr. Oprea to the STP on a full-time basis. CCANP Brief at 29-30. In his prepared testimony Mr. Jordan testified that "[a]s part of [HL&P's] response" to the Show Cause Order, he decided to assign Mr. Oprea to the STP on essentially a full-time basis (Jordan, ff. Tr. 1223, at 7), and that the "underlying caus [of the 79-19

violations] indicated a need for management improvements . . . ." Id. at 6. During the hearings, Mr. Jordan expanded on those statements, testifying that basic organizational changes were made not as a "knee-jerk reaction" to the Show Cause Order, but instead based upon "the overall evaluation" of the Project. Tr. 1342-43, 1384 (Jordan). The Board properly found that such statements were "elaborations of earlier statements" and did not reflect adversely on Mr. Jordan's veracity. PID at 37.

In short, the Board found "no basis for determining that HL&P was anything other than open and frank with the NRC Staff and this Board," and concluded that the evidence on this issue "enhanc[ed]" rather than "detract[ed] from" HL&P's character. PID at 37. That conclusion was fully supported not only by the evidence described above, but also by the uniform testimony of the Staff witnesses who had interacted with HL&P and found it to be "open and candid" (Tr. 9948 (Hayes)) and "probably the most open licensee that I've ever dealt with" (Tr. 9516 (Phillips)). See also, Tr. 9338, 9855, 10069 (Phillips); Seidle et al., ff. Tr. 9205, at 64; Tr. 9850-67 (Phillips, Shewmaker, Hayes); Tr. 9947 (Shewmaker, Phillips); Tr. 10067 (Crossman); Tr. 10070 (Hubacek); Tr. 9511-12 (Taylor); Tr. 10076-79 (Crossman, Phillips, Hall, Tapia, Tomlinson, Hubacek, Herr). Thus, the Board correctly found that HL&P's record of honesty and candor reflected favorably upon its character.

b. The Record Regarding Noncompliances At The STP Does Not Indicate That HL&P Lacks The Necessary Character Qualifications.

CCANP next takes issue with the Board's treatment of the noncompliances identified at STP and their significance in assessing HL&P's character. Its principal arguments in this regard are that the Board improperly gave weight to HL&P's "willingness" or commitment to take necessary corrective actions 37/ and that, contrary to the Board's conclusions, the record reflected less than a full commitment to quality on HL&P's part. CCANP Brief at 30-32.

Clearly, the extent to which an applicant for a license initiates prompt and substantial remedial measures is relevant to its character. See 12-14, supra. In this case, HL&P initiated corrective measures even before the 79-19 Investigation Report was issued (see e.g., Oprea et al., ff. Tr. 1505, at 78-83 (Frazar); Tr. 10073-74 (Phillips)) and followed those up with prompt, detailed actions in response to the formal mandates of the 79-19 Notice of Violation and Show Cause Order. Jordan ff. Tr. 1223, at 6-7; Oprea et al., ff. Tr. 1505, at 24-29 (Oprea). The Board properly took account of those actions in assessing HL&P's character. 38/ PID at 186-99.

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37/ In this regard, CCANP cites Midland, 6 AEC 182 and Shearon Harris, 10 NRC 37. The Midland decision, however, clearly held that an applicant's willingness or managerial attitude is "no less significant" than its technical qualifications. Midland, 6 AEC at 184. The licensing board in Shearon Harris, 10 NRC at 51-56, similarly recognized the relevance of management commitment and motivation.

38/ At page 30 (and again on pages 41-42) of its brief, CCANP

CCANP then disparages Mr. Jordan and Mr. Oprea as well as their efforts to address matters requiring correction. It asserts that they relied on "policy statements" to effect successful implementation of the STP QA program, and relied on "a subordinate" to inform Brown & Root of HL&P's concerns. CCANP Brief at 31. The record reflects, however, that in both attitude and deed, Mr. Jordan and Mr. Oprea were, and are, committed to taking the necessary steps to ensure an effective QA program at STP.

Mr. Jordan, for his part, testified that HL&P management has a clear incentive to do "an absolute first-class, almost perfect job in that project." Tr. 1269 (Jordan). Almost immediately upon becoming HL&P's CEO, Mr. Jordan reaffirmed its corporate policy mandating compliance with the STP QA program. Tr. 1278-83 (Jordan). His testimony showed that as CEO he kept himself informed of developments on STP and participated in discussions with Mr. Oprea regarding appropriate courses of action on the Project. Jordan ff. Tr. 1223, at 5-7, 10; Tr. 1260-66 (Jordan).

Mr. Oprea, while testifying that "QA/QC activities have always received the full support of [HL&P] management" (Tr. 2113, 2243 (Oprea)), recognized that the QA program needed to be

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repeats its allegations (see CCANP Brief at 9-10, 27) that the Board ignored the ramifications of HL&P's alleged deficiencies standing alone. To the contrary, as discussed at 20 supra, the Board separately and extensively considered the number, severity, and significance of the noncompliances, HL&P's record of candor and honesty, and the extent to which it abdicated responsibility and knowledge.

strengthened (Tr. 5464 (Oprea)), and that the 79-19 investigation was helpful in bringing about needed improvements (Tr. 5468 (Oprea)). During the course of the Project, Mr. Oprea interacted with Brown & Root officials to obtain improvements in the QA program (see, e.g., Tr. 5074 (Oprea)), contacted NRC personnel to get interpretations of NRC requirements and their views on the STP QA program (see e.g., Tr. 5473 (Oprea); Tr. 9866 (Hayes); Tr. 9860 (Phillips); Oprea et al., ff. Tr. 1505, at 20; Jordan, ff. Tr. 1223, at 6), and initiated the 1980 Bechtel audit of the QA program (Tr. 5466 (Oprea)). Mr. Oprea's commitment to quality was recognized by several witnesses. Tr. 1966 (Amaral); Tr. 9860 (Phillips); Tr. 9866 (Hayes). Moreover, Staff witnesses testified regarding the strong commitment to QA/QC of HL&P management. Tr. 9506-07 (Seidle); Tr. 9516 (Phillips).

In criticizing the Board's acceptance of HL&P's willingness to correct deficiencies in its prior performance as an indicator of character, CCANP alleges that the Board engaged in a "pernicious . . . , constant search for any sign of willingness." CCANP Brief at 32. CCANP's sole basis for this allegation is a reference to a portion of the Board's decision (which is taken entirely out of context) acknowledging HL&P's efforts to utilize consultants. PID at 47. The Board there considered HL&P's use of consultants in assessing its competence, not as CCANP suggests, its character. Id. In any event, utilization of qualified consultants is hardly evidence of a defect in either competence or character.

Finally, CCANP criticizes HL&P's alleged failure to hire a consultant to review implementation of the STP QA program until 1980, and its alleged unwillingness to "spend the resources to attract and keep top flight, experienced nuclear personnel . . . during the first five years of the project." CCANP Brief at 32. The record shows, however, that HL&P utilized consultant assistance to review STP activities including its QA/QC organization prior to 1980 (Tr. 5120-21 (Oprea, Frazar)), and that HL&P was willing to expend the necessary resources to attract qualified QA personnel and otherwise to provide an effective QA program. Tr. 9516 (Phillips); Tr. 1966-67 (Amaral); Tr. 5104-06 (Turner, Oprea); Tr. 3228-30 (Frazar); Tr. 5119-20 (Oprea); App. Ex. 44 at 1. CCANP's allegations are therefore, unfounded.

c. The Record Regarding HL&P's Alleged Abdication Of Responsibility Does Not Indicate That HL&P Lacks The Necessary Character Qualifications.

CCANP alleges that the Board ignored relevant evidence in its assessment of alleged abdication of responsibility (CCANP Brief at 32), but it fails to identify any such evidence. In fact, the Board considered and decided the matter based upon a wealth of evidence, as described below.

The Board found that while HL&P "at least at upper management levels, . . . did not abdicate responsibility to B&R for the QA/QC program, . . . at lower levels, [it] did not exercise effective control prior to the Show-Cause Order in areas



such as auditing." PID at 42. This finding is consistent with the testimony at the hearing. Tr. 9506 (Seidle); Crossman et al., ff. Tr. 10010, at 30-31. The Board attributed this problem to inexperience and did not consider it to reflect adversely on HL&P's character. PID at 42-44. This was also consistent with the testimony at the hearing. See e.g., Tr. 9506-12 (Seidle, Taylor, Crossman).

In fact, as the Board noted (PID at 158-61), the record reflected numerous examples of HL&P properly exercising its responsibility as an NRC licensee including: its excellent record of reporting deficiencies pursuant to 10 C.F.R. § 50.55(e) (Staff Ex. 92 at 10; Tr. 9855, 10068-69 (Phillips); Tr. 10067 (Crossman); Staff Ex. 133 at 6); its actions in response to the problem of QC Inspector morale (Oprea et al., ff. Tr. 1505, at 13-15 (Oprea); Tr. 5349-52, 5417-22 (Frazar); App. Exs. 44,45); and its efforts to improve the performance of Brown & Root's site management (CEU Ex. 5; Tr. 5414-16, 5433-37 (Turner)).

In response to the Board's amply supported findings and conclusions, CCANP engages in a repetitious criticism of the commitment to quality of Mr. Jordan and Mr. Oprea, criticizes Mr. Frazar's appointment and retention as QA manager and cites the "treatment of Goldberg's access and position compared to Frazer's [sic] . . ." as evidence of favoring cost and schedule considerations over quality.<sup>39/</sup> CCANP Brief at 33.

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<sup>39/</sup> In this regard, CCANP seeks to create the misleading impression that a QC Superintendent minimized the importance of QA/QC activities by referring to quality as a "necessary

CCANP's meritless charges regarding Mr. Jordan's and Mr. Oprea's commitment to quality are discussed above. See 37-38, supra. With respect to Mr. Frazar, the record shows that while his nuclear experience was limited - which he readily admitted (Tr. 3244-46 (Frazar)) - he was considered a bright and competent individual. Tr. 1766-68 (Amaral, Oprea); Tr. 1443-45, 1466-68 (Jordan). Furthermore, the fact that Mr. Goldberg was hired as an officer of the company and Mr. Frazar was not, did not reflect an improper emphasis on cost and schedule over quality but instead, the broader responsibilities of Mr. Goldberg's position (including the quality of construction of the STP). 40/ Tr. 1273-74 (Jordan); Tr. 5455-57 (Oprea); cf. Tr. 9515-18 (Seidle).

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evil." CCANP Brief at 34. The witness to which CCANP refers actually stated that the "general civil superintendent, who is over there now . . . realizes that quality is not just a necessary evil, so to speak, or something that the Government says you've got to have." Tr. 8685 (Singleton).

40/ CCANP also refers to understaffing of QC Inspectors (CCANP Brief at 35) but fails to note that the evidence cited in the PID indicated that such understaffing occurred only during the summer of 1978. Tr. 9277 (Seidle).

It also asserts that Mr. Amaral's testimony addressed abdication of "authority" and not "responsibility" and could not therefore serve to support the Board's conclusion on the latter point. CCANP Brief at 35. In fact, Mr. Amaral testified that HL&P did not abdicate too much responsibility to Brown & Root (Tr. 1920-21 (Amaral)). The Board clearly equated its use of the term "authority" in this particular instance with its surrounding discussion of "responsibility." PID at 157-58.

CCANP next argues that if, as the Board found, HL&P became more involved in the Project and more sensitive to QA over the years, then the 79-19 concerns are "more clearly the responsibility of HL&P" and represent "precisely what we can expect to happen if HL&P does get involved . . . ." CCANP Brief at 35-36 (emphasis in original). In effect, CCANP argues that a sustained effort to solve difficult problems, unless immediately successful, demonstrates an immutable defect in character. That position is patently in error.

d. The Record Regarding HL&P's Alleged Abdication Of Knowledge Does Not Indicate That HL&P Lacks The Necessary Character Qualifications.

CCANP also criticizes the Board's conclusions regarding HL&P's awareness of Project activities. CCANP Brief at 36-37. The Board found that HL&P exposed itself to large amounts of information but that it was not able to fully assess the significance of that information. CCANP argues that this "has very little probative weight" in evaluating character. Id. at 37.

The Board's conclusion that HL&P management's inability to fully assess Project information did not reflect adversely on its character is supported by the opinions of the expert witnesses. Tr. 1850-51, 1897-1901 (Amaral); Tr. 9859 (Phillips); Tr. 9936-37 (Hayes). No witness testified to the contrary and CCANP identifies no evidence which would suggest that the Board's determination on this matter is in error.

- e. Based Upon The Overall Record, The Board Properly Concluded That HL&P Has The Character To Be Granted Operating Licenses For The STP.

As shown above, the record demonstrates that HL&P has been honest and candid with the NRC Staff, the Board and the other parties to this proceeding. While noncompliances did occur, neither their number nor their severity warranted an adverse character finding and HL&P responded in good faith to such noncompliances by taking prompt and extensive remedial measures. Although the Board concluded that HL&P had not exercised effective control of field activities in certain areas, it found that in numerous other areas HL&P had exercised effective and appropriate control of Project activities. PID at 158-61. In essence, HL&P's principal failings were generally attributed to its inexperience in nuclear design and construction and not to any obdurate disregard for its obligations as an NRC licensee. The Board properly found that HL&P had corrected this problem by retaining a number of highly qualified and experienced managerial personnel to complete construction of, and operate, the STP. PID at 52-53.

Having failed to establish that any evidence was either overlooked or misconstrued by the Board, CCANP concludes its argument on the character issue with a wholly unjustified attack on the integrity of the Board itself, relying on entirely irrelevant, extra-record references to the "broader realities of

the nuclear industry." CCANP Brief at 44-46. 41/ Taking one sentence out of context from the Board's decision (id. at 46), it decries the Board's "promotional" attitude and its "aversion" to license denial (id. at 46, 48). This ad hominem attack does not illuminate the record on appeal. Neither these allegations nor CCANP's other arguments demonstrate any error in the Board's conclusion that HL&P has the requisite character.

E. The Record Regarding HL&P'S Inexperience Does Not Detract From The Board's Conclusions Regarding Character And Competence.

CCANP's discussion of HL&P's prior lack of nuclear experience and of the Board's conclusions thereon are found throughout its brief, but in section III, CCANP appears to suggest that by attributing deficiencies in HL&P's performance to inexperience -- a condition that can always be remedied -- the Board so skewed its view of the evidence that "no fatal defect [presumably warranting license denial] could possibly be found . . . ." CCANP Brief at 16. The implication is that the Board concluded that denial of the license was inappropriate in this case because of the mere possibility that remedial action could or might be taken. Had the Board approached the evidence in this manner, error might be inferred; but it did not. Rather,

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41/ CCANP's additional specific allegations regarding honesty, noncompliances and alleged abdication of responsibility and knowledge (CCANP Brief at 40-44) have already been addressed in the previous subsections on those specific matters.

it found that HL&P had already taken significant corrective measures to remedy its lack of nuclear experience. PID at 52-53. 42/

Although the relationship between inexperience and character appears to be the central point raised by CCANP in section III of its brief, CCANP also makes a number of additional unrelated allegations in that section bearing on the inexperience question. We will address each of them briefly below.

CCANP attempts to refute the Board's finding that HL&P lacked nuclear experience by arguing that HL&P had been "on the job" for four years prior to the 79-19 investigation. CCANP Brief at 17. Obviously, HL&P's four years of experience on the STP prior to the 79-19 investigation (during much of which time construction work of limited scope and complexity was being performed (Oprea et al., ff. Tr. 1505, at 6,8 (Oprea), could not provide the experience in nuclear construction which might be acquired by a utility completing one or more nuclear projects.

CCANP next argues that the "height of QC harassment" came after "years of steadily increasing management involvement in nuclear QA/QC." CCANP Brief at 17. The record does not show that harassment was at its "height" in 1979, but rather that such incidents were a recurring problem which HL&P attempted to

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42/ In this context, CCANP raises, for the first time, the irresponsible and unsupported allegation that HL&P management may have lied to the NRC Staff regarding the qualifications of Project personnel in applying for the construction permits for STP. CCANP Brief at 16-17 n.6. There is nothing in the record to support CCANP's innuendo.

correct on a number of occasions, albeit without complete success. PID at 266-74. CCANP fails to cite any record evidence that would attribute the incidents of harassment to neglect rather than inexperience.

It then criticizes HL&P's "long-term failure" to remove Brown & Root from the Project. CCANP Brief at 18. This contention appears to have no relation to HL&P's compliance with NRC requirements, which is the issue under review. Moreover, it suggests that failure to move more promptly to take an extremely difficult step never before undertaken on a nuclear project -- i.e., dismissing the architect-engineer -- reflected lack of character. The record demonstrates that that action involved the weighing of substantial managerial and technical considerations. See e.g., Goldberg, Lex, Crnich ff. Tr. 10403, at 5-7; Tr. 10413-17, 10467-69, 10485-87, 10519-20 (Goldberg). CCANP's contention that it should have been done with greater alacrity is simply one untutored view of an extremely complex decision for which there is no evidentiary support.

CCANP next refers to HL&P's "failure . . . to perform audits of Brown & Root" and its "complete failure . . . to perform a major activity . . . ." CCANP Brief at 19-20. Although one might infer from this charge that HL&P QA was not monitoring the Brown & Root construction activities, that was clearly not the case. From the commencement of construction, HL&P maintained an on-site QA staff to perform surveillance over Brown & Root construction activities. Murphy et al., (Conten-

tions), ff. Tr. 6522, at 75-76, 87-91 (Long); Saltarelli et al., ff. Tr. 7536, at 17-18, 37-40 (Wilson); Pettersson et al., ff. Tr. 5796, at 17-18 (Logan). While certain formal audits of Brown & Root construction site activities were not conducted, these HL&P surveillances were "very similar to audits in nature." Tr. 5172-73 (Frazar).

CCANP also argues that HL&P's alleged "long term lack of technical competence" represents a character failing. CCANP Brief at 20-21. 43/ In addition to the fact that CCANP cites no record evidence to support this claim (nor any evidence the Board failed to consider), its argument appears to have little logic and to be based solely on its self-generated definition of character.

Finally, CCANP argues that "cost and schedule considerations" led to high personnel turnover, reflecting a fundamental value judgment by HL&P to choose financial values over the values required to build a safe nuclear plant." CCANP Brief at 21 (emphasis in original). It concludes that "[t]he single finding that . . . HL&P tolerated the loss of experienced personnel to 'more lucrative [job] offers . . .'" should disqualify it from obtaining an operating license. Id. at 21-22.

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43/ This appears to be essentially a repetition of CCANP's previous, unsupported assertion in subsection II.D of its brief that the existence of deficiencies in technical competence should preclude a positive finding on character. CCANP Brief at 14-16.



The record did show a high rate of turnover in certain Brown & Root site management positions. Tr. 4366-75 (Broom, Grote). Some of those personnel changes were the result either of HL&P concerns regarding the adequacy of progress on the Project or of HL&P's efforts to obtain more experienced personnel. Id. The fact that some personnel left to take more lucrative positions elsewhere, however, could hardly serve to disqualify HL&P as an NRC licensee. 44/ Clearly, the evidence cited by CCANP does not demonstrate that HL&P chose financial considerations over quality. In fact, the record evidence is to the contrary. See 39, supra.

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44/ Under such reasoning, only if HL&P's contractors were the highest paying, or most attractive employers in the country (or the world) would HL&P be likely to meet CCANP's standards.

IV. THE BOARD PROPERLY CONSIDERED CCANP'S SPECIFIC CONTENTIONS IN CONCLUDING THAT HL&P HAS THE NECESSARY CHARACTER AND COMPETENCE.

In section V of its brief, CCANP argues that the Board "narrowly" considered each deficiency in its individual, separately stated contentions "standing alone," and avoided consideration of their cumulative effect on HL&P's character and competence. <sup>45/</sup> CCANP Brief at 49.

CCANP, however, misinterprets the Board's decision. The Board did not merely consider each of the contentions in isolation. It did note that "to avoid redundancy," its specific findings and conclusions on the various contentions would address "each alleged deficiency standing alone." PID at 67. It clearly recognized, however, that "the specific allegations contained in Contentions 1 and 2 are pertinent to the CLI-80-32 issues . . .," and thus, "treated the adequacy of the overall QA/QC program in [its] findings and opinion on the CLI-80-32 issues." Id.

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<sup>45/</sup> While CCANP only submitted proposed findings of fact on contentions 1.7(e) and 2, it now challenges the Board's determinations on several other contentions which it argues "bear significantly" on HL&P's character and competence. CCANP Brief at 49. It should be noted that in its proposed findings of fact, CCANP referred to the "relative unimportance" of these other contentions and to the fact that some "would . . . not contribute materially to the record." CCANP Proposed Findings at 134. Although the Board did authorize CCANP to focus its attention in its proposed findings on those issues it found most significant (Memorandum and Order (August 19, 1982) at 2), the Appeal Board is not ordinarily required to review issues upon which a party has failed to file proposed findings of fact. Three Mile Island, ALAB-772, slip op. at 24-25, n.18; Consumers Power Co., (Midland Plant, Units 1 and 2), ALAB-123, 6 AEC 331, 333 (1973); Omaha Public Power District (Fort Calhoun Station), LBP-73-24, 6 AEC 591, 594 (1973).

In any event, as discussed below, CCANP's contentions, whether considered independently or as a group, do not provide a basis for finding error in the Board's conclusions on HL&P's character and competence.

A. Contention 1.1

CCANP's principal dispute with the Board's handling of contention 1.1 (regarding a surveying error which caused a building to be constructed one foot shorter than originally designed) is that the Board failed to conclude that the error was a result of HL&P's "negligent attitude," that the Board's alleged "inexperience excuse" in this context is inapplicable. CCANP also argues that HL&P's continued "insistence" that 10 C.F.R. Part 50, Appendix B had not been violated reflects adversely on its character. CCANP Brief at 49-51.

Contrary to CCANP's assertions, there was no evidence that HL&P was negligent in permitting the surveying error to occur, and the Board did not attribute that error to any "inexperience excuse". The matter was properly reported to the NRC pursuant to 10 C.F.R. § 50.55(e) (Peverley (Contention 1.1), ff. Tr. 7826, at 3, 7; Seidle et al., ff. Tr. 9205, at 35; Crossman et al., ff. Tr. 10010, at Appendix C, item 8; Staff Ex. 113, at 2), and appropriate remedial measures were taken promptly, resulting in a surveying program which complied with Appendix B. See PID at 67-72, 249-50; Peverley (Contention 1.1), ff. Tr. 7826, at 9; Tr. 7891 (Peverley). The NRC Staff issued no notice

of violation as a result of the error. Staff Ex. 113, at 2; Seidle et al., ff. Tr. 9205, at 36. Furthermore, the fact that HL&P asserted at hearing its legal position that Appendix B, Criterion X (Inspections) does not impose requirements upon surveyors and that, therefore, the surveying activities in question did not violate that provision does not reflect adversely on its character.

B. Contention 1.2 .

CCANP challenges the Board's findings on contention 1.2 (concerning voids detected in the concrete containment walls) by alleging that "numerous similar lower [concrete] pours had been completed, providing experience in just such pours," and that the factors which resulted in the voids "were not uniquely nuclear . . ." CCANP Brief at 51. Thus, CCANP challenges the Board's finding that Brown & Root's lack of nuclear experience contributed to the concrete voids (PID at 74), and argues, without citation to the record, that "cost and schedule pressures" contributed to the problem. CCANP Brief at 51. The record indicates that high concentrations of reinforcing bar and complex structural arrangements which impeded the concrete flow in the areas in question, as well as a combination of other technical factors, contributed to the voids ((Murphy et al. (Contentions), ff. Tr. 6522, at 12-14 (Murphy); Staff Ex. 118 at 4), and that

quality and technical code requirements are applied much more stringently in nuclear construction than in conventional construction. Tr. 9509-10 (Taylor).

The voids were detected by HL&P and Brown & Root, and properly reported to the NRC pursuant to 10 C.F.R. § 50.55(e). Murphy et al. (Contentions), ff. Tr. 6522, at 10-13, 58 (Murphy, Hernandez); Seidle et al., ff. Tr. 9205, at 36-37. An extensive investigation and repair program was undertaken and procedures were modified to prevent further voids. Murphy et al., ff. Tr. 6522, at 11-19 (Murphy); Seidle et al., ff. Tr. 9205, at 37. The NRC Staff determined that the inspection and repair program and the modified procedures were acceptable. Staff Ex. 113, at 4-5; Seidle et al., ff. Tr. 9205, at 36-37; Crossman et al., ff. Tr. 10010, at 19-21.

C. Contention 1.7(a)

Contention 1.7(a), alleges that QC inspectors "were repeatedly and systematically thwarted" in their efforts to verify that design changes were executed in accordance with the purposes of the original design. PID at A-3. CCANP argues that QC personnel were "trying . . . to confirm" appropriate approval of design changes, and alleges without citation, that a memorandum was written "to prevent QC inspectors from confirming [compliance with] Appendix B . . . ." CCANP Brief at 52.

In addition to the fact that QC inspectors were not responsible for verifying appropriate approval of design changes (Peverley (Contention 1.7), ff. Tr. 7835, at 4), the Board properly found that CCANP had not identified any specific example supporting the allegation in the contention. PID at 262.

The record regarding the memorandum to which CCANP apparently refers reflects that its purpose was to ensure that QC inspectors were available to perform their assigned duties and to foster a more efficient method for QC personnel to obtain design clarifications, rather than to improperly limit the scope of their authority. Warnick et al., ff. Tr. 8032, at 19-20 (Singleton); Tr. 8492-95 (Singleton). The NRC Staff also found no evidence to support the contention. Seidle et al., ff. Tr. 9205, at 26.

D. Contention 1.7(e)

Contention 1.7(e) alleges that there were assaults, threats, and other acts of "intimidation" against QC inspectors resulting in inspectors playing cards rather than performing inspections. PID at A-3. CCANP argues that the "fact that HL&P could not get Brown and Root to effectively control harassment and intimidation . . . is highly probative evidence of [its] lack of character and competence . . . ." CCANP Brief at 53.

There was an extensive record compiled on the incidents of QC Inspector harassment, HL&P's responses to those incidents and their significance in evaluating HL&P's character and

competence. See e.g., Oprea et al., ff. Tr. 1505, at 11-15 (Oprea); Broom and Vurpillat, ff. Tr. 3646, at 29-34, 37-44 (Broom, Vurpillat); Warnick et al., ff. Tr. 8032, at 11-44; Seidle et al., ff. Tr. 9205, at 16-18; Tr. 5073-85 (Oprea, Turner); Tr. 9408-450 (Seidle, Crossman, Hubacek, Taylor, Phillips); Tr. 9265-71 (Crossman, Hubacek, Seidle). The Board properly found that HL&P took steps throughout the Project to address concerns regarding harassment and low morale of QC inspectors, and that improvements were observed, although problems later occurred. PID at 38, 266-74. In response to the Show Cause Order, additional corrective actions were taken which appear to be more permanently effective (subject to supplementation of the record in the next phase of the proceeding regarding the record at STP since Brown & Root's dismissal). Id. at 274-75.

With respect to CCANP's specific allegations, the record does not support CCANP's claim that inspection activities were not performed. Warnick et al., ff. Tr. 8032, at 27 (Singleton); Tr. 8453-54 (Singleton); Tr. 6462 (Duke); Tr. 4159-60 (Broom). The only card games played by QC inspectors occurred during lunch breaks and periods of low construction activity and did not interfere with inspections. Tr. 8442, 8447, 8452-54 (Singleton); Tr. 6461, 6482-84, 6497 (Duke).

E. Contentions 1.8(a) and (b)

Contentions 1.8(a) and (b) allege that HL&P failed to "assure prompt corrective action by Brown & Root in the area of access engineering . . .," and failed to have a "consistent policy on the issuance of stop work orders . . . ." PID at A-4. CCANP's only dispute with the Board's determination on these contentions is its unsupported allegation that HL&P failed to take prompt action to correct the concern which was the subject of the contention. CCANP Brief at 54. The Board's findings, however, that HL&P acted "decisively and promptly to correct the access engineering problem," (PID at 84) and that its stop work procedures were adequate, are supported by the record. Frazar et al., ff. Tr. 10123, at 3-6, 9. Tr. 10201 (Overstreet); Tr. 10213-15, 10153-54 (Frazar); Staff Ex. 124, at 3.

F. Contention 1.8(c)

Contention 1.8(c) was based upon an allegation that HL&P QA management had instructed HL&P auditing personnel not to write nonconformance reports on items not in compliance with the STP FSAR or Quality Assurance Program Description, since such documents were licensing rather than regulatory documents. PID at A-4; Staff Ex. 124, at 6. The record shows that the purpose of the instruction in question was not to prevent auditors from ever auditing against such "upper-tier" documents, but instead to ensure that HL&P personnel were auditing Brown & Root site QA personnel against the field procedures actually used by those



personnel in performing their work. Frazar et al., ff. Tr. 10123, at 10-11 (Frazar); Tr. 10144-46, 10159 (Frazar). Audits of the procedures against "upper-tier" documents are performed separately. Frazar et al., ff Tr. 10123, at 11 (Frazar). The instruction was subsequently clarified (id. at 12) and the NRC Staff found no violation of NRC requirements (Staff Ex. 124, at 3, 6-7).

G. Contention 1.8(d)

Contention 1.8(d) was based upon allegations that two HL&P QA procurement personnel lacked sufficient experience and that they had improperly instructed other HL&P QA personnel not to write nonconformance reports but instead to refer such matters to Brown & Root. PID at A-4; Staff Ex. 124 at 8. CCANP's somewhat cryptic complaints regarding the Board's findings on this contention (which appear to relate more to contention 1.8(c) than to contention 1.8(d)) are that HL&P did not have the procedures necessary to implement its QA program, and that it refused to allow inspectors to use "higher tier documents to do the job." CCANP Brief at 54.

The NRC Staff's investigation of the allegations revealed that the two individuals in question were qualified for their positions, that HL&P procedures permitted nonconformances to be written by HL&P or Brown & Root personnel, and that, while on one occasion HL&P QA personnel were referred to Brown & Root

regarding the initiation of a nonconformance report, such referral was consistent with applicable procedures. Staff Ex. 124 at 2-3, 8-9.

In short, CCANP's allegations regarding the Board's findings on the various contentions are, for the most part, unsupported by the record and mistaken, and do not therefore demonstrate that the Board erred in concluding that HL&P has the requisite character and competence to operate the STP.

V. HL&P'S REMEDIAL STEPS PROVIDE ASSURANCE THAT IT HAS THE NECESSARY CHARACTER AND COMPETENCE.

In section VI of its brief, CCANP challenges the Board's findings on Issue B (regarding the adequacy of HL&P's remedial measures). Just as it failed to do in its proposed findings of fact, however, CCANP fails to address the adequacy of HL&P's remedial measures as a whole, but instead, attacks only selected portions of the Board's findings.

In response to concerns identified in late 1979 and later documented in the 79-19 Investigation Report, HL&P undertook extensive remedial measures which are addressed throughout the record. Those measures included, among other things: commissioning the Bechtel independent audit of the STP QA program; 46/ identification and correction of the specific violations and their "root causes"; 47/ addition of more and better qualified personnel; 48/ additional training for Project personnel; 49/ numerous procedural revisions; 50/ organizational

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46/ See e.g., Oprea et al., ff. Tr. 1505, at 18-19, 119-20 (Oprea, Amaral).

47/ See e.g., Oprea et al., ff. Tr. 1505, at 19, 25-27 (Oprea).

48/ See e.g., Oprea et al., ff. Tr. 1505, at 14-15, 40-41, 67-69, 114 (Oprea, Briskin, Frazar); Broom and Vurpillat, ff. Tr. 3646, at 50-52 (Vurpillat).

49/ See e.g., Oprea et al., ff. Tr. 1505, at 82 (Frazar); Broom and Vurpillat, ff. Tr. 3646, at 46-47 (Vurpillat); Saltarelli et al., ff. Tr. 7536, at 41-42.

50/ See e.g., Oprea et al., ff. Tr. 1505, at 14, 20, 78-79, 81-83, 88-89, 95-116 (Oprea, Frazar); Broom and Vurpillat, ff. Tr. 3646, at 45-46 (Vurpillat); Saltarelli et al., ff. Tr. 7536, at 23, 36-37, 43-44; Pettersson et al., ff. Tr. 5796,

restructuring; 51/ detailed studies of construction work; 52/ repair of defective work; 53/ and extensive measures to address concerns regarding QC inspector morale and to provide appropriate management support. 54/ These, as well as many other actions, are among the numerous remedial measures ignored by CCANP in its brief discussion of Issue B.

The Board began its discussion of Issue B by stating that the "most significant of the deficiencies" identified under Issue A was the "lack of adequate nuclear experience on the part of both HL&P and B&R." PID at 52. It concluded, however, that "HL&P took steps to remedy that deficiency by adding significantly to the experience available to the managerial personnel responsible for the STP," citing, among other things, the hiring of Mr. Goldberg, and new Corporate and Project QA Managers with substantial experience. Id. The Board also noted the replace-

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at 24-25; Murphy et al. (Contentions), ff. Tr. 6522, at 9-10, 19-20 (Murphy).

51/ See e.g., Oprea et al., ff. Tr. 1505, at 33, 36-40 (Oprea).

52/ See e.g., Murphy et al. (Concrete Verification), ff. Tr. 6327, at 9-31; Saltarelli et al., ff. 7536, at 25-36, 44-48, 50-57; Pettersson et al., ff. Tr. 5796, at 27-31; Murphy et al. (Contentions), ff. Tr. 6522, at 11-15.

53/ See e.g., Murphy et al. (Contentions), ff. Tr. 6522, at 15-19, 22-23 (Murphy, Artuso); Saltarelli et al., ff. Tr. 7536, at 44-47.

54/ See e.g., Oprea et al., ff. Tr. 1505, at 11-15, 28, 78-81 (Oprea, Frazar); Broom and Vurpillat, ff. Tr. 3646, at 39-44, 49 (Broom).

ment of Brown & Root with Bechtel and Ebasco as an important improvement in the level of nuclear experience on the Project. Id. at 53.

In addition, the Board determined that HL&P had shortened its "organizational lines of communication," responded in a satisfactory manner to the various show cause items, and increased its involvement in QA/QC activities. Id. at 53-54. It also found that "the remedial actions taken by HL&P for deficiencies in the STP program were prompt, appropriate and . . . for the most part effective," and that HL&P has "energetically taken steps to correct unsatisfactory and undesirable situations and has exhibited an active desire to insure quality . . . at the STP." Id. at 197. Thus, the Board concluded that "HL&P has taken remedial steps which appear sufficient to provide reasonable assurance that it has the managerial competence and character to operate STP safely." Id. at 199.

The Board did state, however, that it was reaching "only a preliminary evaluation of the competence of HL&P, Bechtel or Ebasco . . . and the effectiveness of corrective actions" given the absence in the record of information regarding performance at STP since Brown & Root's termination. Id. at 56. The record in this regard will be supplemented in the next phase of the proceeding. Id. at 56-57.

In challenging the Board's findings on Issue B, CCANP first asserts that it erred in treating the removal of Brown & Root from the Project "as a remedial act," that HL&P took "an

inordinately long time" to recognize Brown & Root's weaknesses, that it dismissed Brown & Root only from its position as architect-engineer and not from its position as constructor, and that the dismissal was not motivated by quality concerns. CCANP Brief at 54-55.

The Board recognized that HL&P "did not [remove Brown & Root] for the express purpose of upgrading its QA/QC program." PID at 40. Nevertheless, it found that "that action is likely to have that effect," recognizing that Brown & Root's replacement with Bechtel and Ebasco would significantly increase the amount of nuclear experience on the Project. Id. The Board also found HL&P's dismissal of Brown & Root as "strongly representative of [its] assumption of responsibility for the project" and therefore indicative of good character. Id. at 160. CCANP's allegation that HL&P took "an inordinately long time" to dismiss Brown & Root is not supported by the record, and in any event, does not reflect adversely on its competence or character. Id.; see 46, supra. Finally, the NRC Staff also found Brown & Root's replacement to reflect favorably upon HL&P. Tr. 10082 (Hall); Staff Ex. 131 at 7.

CCANP next alleges that "[t]he problem for HL&P is at the top," and that "decisions on continuing operation will be made by the same two top people who let the project get out of control in the first place." CCANP Brief at 55. It also criti-

cizes the HL&P Board of Directors for failing to "discipline or remove" Mr. Jordan and Mr. Oprea "even when their failure became a scandal." *Id.* at 56.

Applicants have already set forth the record demonstrating both Mr. Jordan's and Mr. Oprea's commitment to quality. See 37-38, supra. CCANP ignores that record and fails to cite any basis for these allegations. Moreover, CCANP fails to address the significant personnel changes made "at the top" to bolster HL&P's capability to safely build and operate the STP, including the hiring of Mr. Goldberg and Mr. Dewease, both of whom possess extensive nuclear experience and qualifications. Jordan ff. Tr. 1223, at 8; Oprea et al., ff. Tr. 1505, at 42-43 (Oprea); Tr. 9527 (Crossman); Goldberg and Frazar, ff. Tr. 906, at 3-4 (Goldberg); Goldberg and Dewease, ff. Tr. 10548, at 2-4 (Dewease).

The record of HL&P's remedial measures was substantial and CCANP's criticisms of the Board's findings (which address only a small portion of the record supporting the Board's decision on those measures) are meritless. Thus, there is no basis for questioning the Board's conclusions on Issue B.

VI. THE LICENSING BOARD DID NOT VIOLATE CCANP'S DUE PROCESS RIGHTS.

In section VII of its brief, CCANP argues that the Board "systematically violated" its due process rights, in various respects. CCANP Brief at 56-57. None of CCANP's arguments has merit.

CCANP first alleges that the Board "showed a clear bias toward HL&P." Id. The only evidence of that "clear" bias, however, is CCANP's argument that the Board adopted legal standards and reached factual conclusions with which CCANP does not agree. Id. at 57-62. The legal standards utilized by the Board are fully in accord with applicable precedent and its factual conclusions are thoroughly supported by the record. <sup>55/</sup> Notwithstanding CCANP's disagreement, it is well settled that the mere fact that issues of fact or law were decided against one party is not evidence of bias. Three Mile Island, ALAB-772, slip op. at 93 n.75; Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 923 (1981); cf. Dairyland Power Cooperative (La Crosse Boiling Water Reactor), ALAB-614, 12 NRC 347, 349 (1980).

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<sup>55/</sup> Since much of CCANP's section VII characterizes as due process violations many of the Board's rulings on facts or law which are discussed elsewhere in its brief, the substantive merits of such rulings are similarly addressed in other portions of Applicants' brief.



CCANP next alleges that one member of the Licensing Board, Judge Hill, was biased. Id. at 63. CCANP's claims in this regard have already been adjudicated by the Commission (Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363 (1982)), and CCANP has not cited any new basis for its position. Accordingly, that matter is not properly before the Appeal Board.

Thereafter, CCANP takes issue with the manner in which the Board regulated cross-examination during the proceeding. CCANP Brief at 64-67. It complains first that it was required to submit a cross-examination plan. Id. at 64. The Commission, however, has itself recommended the use of such plans to assist in expediting hearings and the Board's requirement for such a plan was not improper. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981).

CCANP next challenges the Board's efforts to control the length of its cross-examination. CCANP Brief at 64-65. It fails to recognize, however, that the authority of a licensing board to take "necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination" is well established (10 C.F.R. § 2.757(c); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147 (1979); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 868 (1974)), and that a decision to so limit cross-examination is not reviewable absent a showing of prejudice (Southern California

Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-82-11, 15 NRC 1383, 1384 (1982); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1096, 1098-99 (1983)). No such showing has been made in this case.

Most importantly, although CCANP cites four instances in which the Board allegedly "enforced or threatened to enforce" time limitations on its cross-examination (CCANP Brief at 64-65), the Board did not, in fact, limit CCANP's cross-examination in any of those instances. Tr. 9482, 9917, 5060, 6818-19, 7002-19. In only one instance (Tr. 6818) did the Board state that it was limiting CCANP's cross-examination, and even there, it subsequently permitted additional cross-examination and CCANP announced that it had no further questions. Tr. 7002-19. Thus, no prejudice resulted from the Board's efforts to control the length of cross-examination.

CCANP also takes issue with the Board's rulings on various objections to its cross-examination. CCANP Brief at 65-67. Rather than specifically identifying the alleged errors and referring to record support therefor, as it is required to do (10 C.F.R. § 2.762(d)(1) and (2); Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Units 1 and 2), ALAB-739, 18 NRC 335, 338 n. 4 (1983)), CCANP merely cites large portions of the record in which it alleges errors occurred and refers to "at least thirty five" unidentified erroneous rulings. Id. at 66-67.

A review of the specific rulings which CCANP actually does cite (Tr. 9773-74, 9374, 9837-39, 9914), does not reveal any error and CCANP fails to identify why it believes those rulings are in error. Even assuming, arguendo, that the Board erred in these rulings, no prejudice resulted, and CCANP's opportunity to engage in appropriate cross-examination was not jeopardized. 56/

CCANP also asserts that its due process rights were violated by the Board's failure to delay the first week of hearings because of its representative's law school final examinations. CCANP Brief at 67-68. This very assertion was rejected when CCANP brought it to the Appeal Board at the start of the hearings. Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-637, 13 NRC 367, 370-372 (1981). Moreover, CCANP was represented by counsel during the first week of hearings and thus was not prejudiced. 57/

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56/ CCANP also cites Tr. 9482 and 9917 as "one of the instances where the ASLB decided to actually enforce its threat to arbitrarily cut off . . . cross-examination . . . ." CCANP Brief at 67. Contrary to that allegation, no such limitation was enforced and CCANP's representative, in both instances, completed his examination. See Tr. 9482-9503; 9917-19.

57/ Applicants also take issue with CCANP's assertion that the "expedition [mandated by the Commission in CLI-80-32] was solely for CCANP's benefit and to protect the public from a possibly unworthy license applicant." CCANP Brief at 68. The Commission's desire for an expedited hearing was almost certainly motivated by its perception of the public interest and not "for CCANP's benefit . . . ." See CLI-80-32, 12 NRC at 291.

CCANP's next claim is that the Board failed to render findings and conclusions on Issue A and that such alleged failure deprived it of notice as to "what was being litigated in this proceeding." CCANP Brief at 68-69. CCANP's allegation that the Board failed to consider and reach findings on Issue A is addressed extensively above. See, 16-21, supra. Furthermore, CCANP's assertion that it was not on notice regarding the issues to be litigated is meritless. In the course of adopting Issue B (Second Prehearing Conference Order (December 2, 1980) at 4; Tr. 238-47, 265-69, 285-86, 299-302), and on other occasions, the Board explained that it would consider HL&P's remedial measures relevant to HL&P's qualifications as an NRC licensee. The pre-hearing briefs and testimony of the various parties also placed CCANP on notice that both Applicants and the NRC Staff would urge that the significance of remedial measures be considered by the Board. CCANP's failure to address the issues delineated for hearing was not due to lack of notice.

CCANP then argues that the Board violated the Administrative Procedure Act (APA) (5 U.S.C. § 556(d)) by limiting the scope of cross-examination to matters raised during direct examination. Id. at 69-70. The authority of a licensing board to so limit cross-examination is, however, well-established (Waterford, 17 NRC at 1096; Prairie Island, 8 AEC at 867), and CCANP fails to cite a single precedent holding that such practice is inconsistent with the APA. Moreover, CCANP has failed to

demonstrate that it has in any way been prejudiced. 58/ The lack of prejudice is clearly shown by the fact that CCANP could have solicited additional testimony from the witnesses who testified at the hearing as part of its direct case if it so desired. 59/

CCANP next challenges the use of prefiled written testimony and witness panels. CCANP Brief at 71-74. Neither attack has any merit. The Commission's regulations explicitly provide for the submittal of direct testimony "in written form, unless otherwise ordered by the presiding officer on the basis of objections presented." 10 C.F.R. § 2.743(b). We are aware of no such objections made by CCANP. Testimony by witness panels is also contemplated by NRC regulations. (10 C.F.R. Part 2, Appendix A, V(d)(4). Applicants do not recall any general objection by CCANP to such procedure, and none is cited. 60/ Furthermore, CCANP has alleged no prejudice resulting from these

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58/ Furthermore, its allegation that the Board "stretched the rules for the NRC . . ." is without merit. CCANP Brief at 70. The testimony of the Staff witnesses was clearly within the scope of their direct examination regarding the reasons upon which they concluded that HL&P has the requisite character to be granted operating licenses. (Tr. 9845-63). In addition, rather than objecting to the Staff's testimony as beyond the scope of direct, CCANP's representative argued that the testimony did not correspond to the cross-examination he was conducting. Tr. 9829-30. That objection, however, was erroneous. See Tr. 9845-63. In any event, no prejudice has been demonstrated.

59/ The Board granted subpoenas to the intervenors (Tr. 2684-86) for numerous persons who were never called as witnesses.

60/ In some instances, CEU did request that panel members be sequestered. The Board granted two such requests. Tr. 6458, 8038.

commonly employed hearing procedures. 61/

CCANP also alleges that it was not provided an "ample opportunity for discovery . . . ." CCANP Brief at 74-75. On the contrary, the Board provided the parties with over 18 months of discovery prior to the hearings. Memorandum and Order (August 3, 1979) at 10; Memorandum and Order (August 1, 1980) at 2; Second Prehearing Conference Order (December 2, 1980) at 5-7. All of this discovery period occurred after CCANP's original contentions were admitted, and much of it after the NRC issued the 79-19 Investigation Report. After the second prehearing conference, in which Issues A-F were admitted, the Board granted an additional 60 days for interrogatories, requests for production, etc., and 120 days for depositions. Second Prehearing Conference Order (December 2, 1980) at 5-7. In the face of this record, CCANP's unsupported claims do not demonstrate that the Board's actions made it "impossible to obtain crucial evidence . . ." and do not therefore begin to suggest reversible error. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-303, 2 NRC 858, 869 (1975). See also Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-438, 6 NRC 638 (1977).

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61/ CCANP also alleges that "[a] prime example of the potential for abuse [of the panel format] was the panel of QC inspectors being questioned about the card game." CCANP Brief at 73-74. There was no such panel. The only QC inspectors who were questioned about card games were on the stand individually and not as part of a panel during such questioning. Tr. 6459-62, 6481-85, 6494-98 (Duke); Tr. 8442-54 (Singleton). Indeed, the first such witness testified only after all other witnesses had left the hearing room. Tr. 6458.

While CCANP alleges, without citation, that it moved for additional discovery on unspecified matters "which had come to light after the time for discovery was near" and that its motion was denied (CCANP Brief at 74), Applicants recall no such motion from CCANP. Perhaps CCANP is referring to the motion filed by CEU two days before the hearings began, seeking consideration of a new contention and additional discovery on matters addressed in two NRC inspection reports. 62/ In denying that motion the Board indicated that it would permit additional cross-examination on the matters addressed therein. Tr. 970, 1009. Since such cross-examination was, in fact, permitted (Tr. 4589-4740), there is no apparent basis for CCANP's allegation that "[t]he promised extra cross-examination was never granted." CCANP Brief at 74. Furthermore, CCANP did get discovery on this issue. It was provided a large number of documents in response to its informal discovery request at the hearing. Tr. 4876. In short, CCANP was afforded opportunity both for discovery and cross-examination on this issue. Its claims, therefore, are without merit.

Finally, CCANP argues that the "cumulative" effect of the Board's alleged errors denied it a fair hearing. CCANP Brief at 75-76. CCANP has, however, failed to show that the Board has committed any errors which either individually or collectively were "of sufficient magnitude to have affected substantial

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62/ CEU Motion to Accept New Contentions and Establish Additional Discovery and Hearing Schedule (May 11, 1981).

rights," and clearly no prejudice has resulted. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-248, 8 AEC 957 (1974). See also Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-204, 7 AEC 835 (1974). On the contrary, CCANP's claims are for the most part unsupported allegations 63/ and challenges to procedures well established in Commission proceedings. Thus, there is no basis for CCANP's claim that its due process rights were violated.

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63/ CCANP's final lengthy citation (CCANP Brief at 75-76) to those portions of the record where the Board allegedly committed additional unspecified errors fails to "clearly identify the errors of fact or law that are the subject of [its] appeal." 10 C.F.R. § 2.762(d)(1). Such bare references to the record, devoid of even a simple reference to the specific error alleged, do not provide either a legitimate basis for appellate review or a reasonable opportunity for Applicants to understand and respond to CCANP's contentions. See 48 Fed. Reg. 52282, 52284 (November 17, 1983) (Deletion of Exception Filing Requirement for Appeal from Initial Decision; Consolidation of Responsive Briefs).



VII. CCANP'S CHALLENGES TO THE BOARD'S SPECIFIC FINDINGS OF FACT DO NOT DEMONSTRATE THAT THE BOARD ERRED IN CONCLUDING THAT HL&P HAS THE NECESSARY CHARACTER AND COMPETENCE.

CCANP devotes section VIII of its brief to a "response" to the Board's specific findings of fact. CCANP has, in general, not attempted to identify specific errors of law or fact which would justify reversal or modification of the Board's decision, but has instead "responded" to the Board's findings as it might to another party's proposals. Nevertheless, Applicants have reviewed CCANP's allegations and respond to them below.

Most of CCANP's assertions can be disposed of in cursory fashion given their lack of substance, repetitive nature or lack of evidentiary support. Where possible, Applicants have attempted to identify and respond to CCANP's principal arguments in a coherent fashion. In many instances, however, because of the disjointed and unrelated nature of CCANP's allegations, Applicants have necessarily addressed those arguments on a finding by finding basis.

In a number of its responses, CCANP either concurs with the Board's specific finding or does no more than provide an "off-the-cuff" commentary on that finding unsupported by any record citation. See CCANP responses to Board findings of fact (FOF) 44, 58, 62, 79, 98, 103, 112 and 146. In numerous other instances, it reiterates allegations made earlier in its brief, which Applicants address elsewhere in this brief. With respect to: FOF 74 and 86 (HL&P's alleged sacrifice of quality for cost

and schedule considerations and the Board's handling of "immutable" defects), see 21 n.18, 39, 47-48, supra; FOF 83, 159 and 161 (HL&P's motivation in taking corrective actions), see 12-14, supra; FOF 85 (alleged false statement by Mr. Oprea) see 32-34, supra; FOF 94 (Bechtel's assessment of alternative QA organizations), see 31-32, supra; FOF 99-102, 107-09, 118, 122, 131, 136, 138, 139 and 162 (the alleged lack of character and competence of HL&P's principal officers), see 32-35, 37-38, 40-41, 61-62, supra; FOF 115 and 116 (HL&P's alleged abdication of responsibility), see 39-42, supra; FOF 141 (irrelevant and immaterial extra-record references), see 43-44, supra; and FOF 172 (the frequency with which HL&P utilized QA consultants), see 39, supra.

In response to Board FOF 6, CCANP argues, without citation to authority, that the Board erred in only permitting it to adopt one of CEU's contentions after that party's withdrawal from the proceeding. CCANP Brief at 76. The Board, however, properly concluded that, with the exception of CEU contention 4, CCANP had failed to demonstrate that a balancing of the factors set forth in 10 C.F.R. § 2.714(a)(1) for admission of a late-filed contention (or adoption of a withdrawing party's contentions) warranted granting CCANP's motion on CEU's remaining contentions. Memorandum and Order (October 15, 1982) at 1-9 citing Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 795-98 (1977).

CCANP challenges all of the Board's findings regarding alleged false statements in the FSAR (FOF 14-34) on the basis of its assertion that Applicants "admitted the allegation," and that, once that admission had been made, Applicants waived their right to contest the validity of the allegations. CCANP Brief at 76-77. Contrary to CCANP's assertions, Applicants did not admit that the FSAR statements were false, but instead described the discrepancies between the requirements in the FSAR and actual practice in the field. (Staff Ex. 48 at 2-33 to 2-36; Pettersson and White, ff. Tr. 6162, at 9-10; Tr. 6188-91, 6205, 6208-10, 6216 (Pettersson, White); PID at 117). As shown at 30-31, supra, the record reflects that those statements, indeed, were not false.

In response to Board FOF 35, CCANP focuses upon one of several factors the Board considered relevant to its consideration of the various noncompliances at STP (i.e., the prior knowledge or involvement of management in those noncompliances), to the exclusion of the other factors cited by the Board. CCANP Brief at 77-79. CCANP does not allege that this factor should not have been considered by the Board. Instead, it argues vaguely that regardless of whether HL&P management "was aware of what was going on" or "was not aware," the result should be the same: a finding that HL&P lacks the requisite character. Id. at 77. CCANP provides no support for its "catch 22" analysis. The Board's discussion of management awareness and its significance appears in FOF 126-32 and 196-87, not in FOF 35. There, the

Board properly concludes that HL&P's record in this regard does not demonstrate that it lacks the requisite character or competence. PID at 183. None of CCANP's arguments refute the Board's well-supported position.

CCANP also hypothesizes in response to FOF 35 that "[i]f . . . deliberate decisions" of HL&P's caused its alleged failures to stay informed or to retain responsibility, then a similar result should obtain. 64/ CCANP Brief at 78. No factual support underlies that supposition and, in fact, none appears in the record.

In response to FOF 36, CCANP alleges that "many of the ASLB's findings seem to indicate" that it believed that the period of record under consideration ended with the 79-19 investigation. 65/ Id. at 79. Although CCANP does not identify such alleged findings, it is clear that the Board evaluated the complete record through 1981. See e.g., PID at 144-46.

In response to FOF 80, CCANP alleges that the Board reached inconsistent conclusions regarding the extent of HL&P management involvement in the Project. CCANP Brief at 80. CCANP's references to the Board's findings (FOF 118, 120, 127, 129, 182, and 186), however, do not support its assertion.

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64/ See also, CCANP responses to FOF 96, 97 and 120. CCANP Brief at 82-83, 85.

65/ This is a particularly odd criticism of the Board's decision given CCANP's repeated attempts to limit the issues to be addressed in the proceeding by arguing that the Board should ignore, among other things, remedial measures taken after issuance of the 79-19 findings.

Those references indicate that one of Applicants' witnesses (Mr. Amaral) testified that HL&P had not adequately involved itself in assuring effective implementation of the QA program prior to the 79-19 investigation (FOF 80, 129), and that a Staff witness concluded that HL&P was too involved in Project details to "properly exercise its management overview QA responsibilities" (FOF 118). Mr. Oprea and Mr. Jordan testified that HL&P's involvement in the Project increased over time (FOF 120, 127). The Board subsequently concluded that HL&P had exercised "too little management involvement in the site program" prior to the 79-19 investigation (FOF 186, 182). Thus, the statements of the witnesses and the Board's conclusions are fully consistent. Contrary to CCANP's allegations, the Board did not modify its conclusions "depending on the point [it was] trying to make." CCANP Brief at 80.

CCANP asserts that the Board should have devoted more attention to the brochure discussed in FOF 84, which addressed implementation of the Brown & Root QA program at STP. CCANP Brief at 80. It argues that the brochure, which the NRC Staff concluded overemphasized cost and schedule considerations, was a "classic case of abdication of responsibility and failure to keep informed . . ." and therefore challenges HL&P's "resolve." Id. The full record reflects, however, that the original brochure was promptly retracted, an additional oral presentation by the Brown & Root Group Vice President was held to make it "abundantly clear" that QA personnel were to function without regard to cost

and scheduling considerations, and an effort was made to retrieve all copies of the original brochure. Broom and Vurpillat, ff. Tr. 3646, at 40 (Broom); Staff Ex. 48, 4-1 4-2; Oprea et al., ff. Tr. 1505, at 30-31 (Oprea); Tr. 4327 (Broom).

In response to FOF 86, CCANP first criticizes the Board for finding "significance" in the fact that there was no "total breakdown of QA/QC," implying that this was the standard utilized by the Board in evaluating the significance of the noncompliances on HL&P's character and competence. CCANP Brief at 80-81. FOF 86, however, simply consists of the Board's summary of portions of the Staff's testimony. PID at 142-43. There is no indication either in this finding or any other portion of the decision that the Board used "total breakdown" as the criterion or standard against which to measure QA/QC performance. 66/

In its response to FOF 87, CCANP takes issue with testimony of the NRC Staff rather than the conclusions the Board drew from that testimony. CCANP Brief at 81-82. CCANP implies from the Staff's conclusion that HL&P's record was "not sufficiently poor" to warrant denial of a license, that the "regulators are satisfied with poor performance." Id. This accusation is patently false. The Staff's dissatisfaction with compliance at STP led to the Show Cause Order, the Notice of Violation and the civil penalty. It is fully consistent,

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66/ CCANP also refers to an alleged "ambiguity" in the use of the term "breakdown," but fails to describe either the nature of the ambiguity or the manner in which it improperly affected the Board's decision. CCANP Brief at 80-81.

however, for the Staff to conclude that the circumstances did not rise to a level warranting license denial. While CCANP concludes that there is "no better" predictor of operating performance than "performance of the applicant under the construction permit" (CCANP Brief at 82), the Staff appropriately recognized that such performance includes the record of measures taken to address concerns arising during construction. Shewmaker et al., ff. Tr. 9576, at 48-50.

Based upon FOF 89, which cited Staff testimony that noncompliances identified after the 79-19 investigation were "similar" to those previously identified, CCANP concludes that remedial measures were apparently ineffective. CCANP Brief at 82. The comprehensive record on this subject provides ample support for the Board's conclusion that "HL&P has taken remedial steps which appear sufficient to provide reasonable assurance that it has the managerial competence and character to operate STP safely." PID at 199. CCANP's citation to the fact that some similar violations occurred in the period after the 79-19 investigation is not inconsistent with the Board's findings which are based on the entire record which was before it.

In response to FOF 124, CCANP argues that it was inappropriate for HL&P to utilize a consultant's memorandum to inform Brown & Root of its concerns regarding Brown & Root site management. CCANP Brief at 85. The Board properly found, however, that the memorandum in question had been sent after consideration by HL&P managers, that it sufficiently detailed

HL&P's concerns and expectations, and that it informed Brown & Root that, unless significant improvements were made, alternatives for completing STP would be considered. CEU Ex. 5; Tr. 5414-16, 5433-37 (Turner); PID at 160. Furthermore, the "consultant" in question was a full-time HL&P employee who was being considered as a candidate for the position of Vice-President responsible for the Project. Tr. 5105-07 (Turner, Oprea).

In response to FOF 163, CCANP completely mischaracterizes the NRC Staff's testimony, alleging that the Staff "concludes there were areas where HL&P failed completely." CCANP Brief at 87. The cited portions of the Staff's testimony actually state that "in each [instance of noncompliance] . . . if there was one failure to follow procedure, I can show you 900 where maybe they did follow the procedure," and that "[inspection] reports tend to be negative . . . ." Tr. 9860-61 (Phillips, Shewmaker).

In response to FOF 170, CCANP alleges that "irreparable [construction] defects [at STP] can be inferred, notwithstanding any testimony to the contrary." CCANP Brief at 87-88. CCANP's mere allegation should carry no weight in the face of substantial testimony that there were no such defects. Shewmaker, et al, ff. Tr. 9576, at 7-8, 49; Tr. 9859, 9957-58 (Shewmaker, Phillips, Hayes).



CCANP's allegation in response to FOF 173 that an NRC witness did "not accept the inexperience explanation" (CCANP Brief at 88) is contrary to the portion of the record cited in the Board's finding. Tr. 9952-57 (Hayes, Shewmaker, Phillips).

Finally, CCANP challenges FOF 177, 179 and 180, arguing that with respect to license denial "the case is open and shut," and again repeating its misinterpretation of the Board's standard as one requiring a finding of "total incompetence" for license denial. CCANP Brief at 88-89. By reference to its simplistic Figure 2 in Appendix 2 of its brief, CCANP characterizes the standard for character and competence which it believes would support the grant of an operating license as "Excellent," while alleging that the Staff's standard is "Poor" and the Board's is "Fail." Nothing in the cited findings or elsewhere in the decision, however, supports the accusation that the Board established "total incompetence" as the standard for denial. The Board carefully delineated the standards it utilized. PID at 7-25. FOF 177, 179 and 180 illustrate the Board's careful weighing of the entire record in applying those standards. They are part of a logical, comprehensive decision, with ample record support.

Thus, none of CCANP's responses to the Board's findings demonstrate that the Board erred in concluding that HL&P has the requisite character and competence.

VIII. CCANP HAS FAILED TO DEMONSTRATE A SUFFICIENT BASIS FOR REOPENING THE PHASE I RECORD.

In section IX of its brief, CCANP argues that the Board erred in denying its motion to reopen the Phase I record to admit evidence relating to a report prepared by the Commission's Office of Inspector and Auditor (OIA). 67/ CCANP Brief at 89.

As the Board recognized, however, the documents proffered by CCANP were cumulative and do not provide new factual information material to the issues in the proceeding. PID at 97. See, Metropolitan Edison Co. (Three Mile Island Nuclear Generating Station, Unit 1), ALAB-774, \_\_\_ NRC \_\_\_, slip op. at 7-8 (June 19, 1984); Diablo Canyon, 13 NRC at 994-95 (1981). Thus, the Board found that the documents did not have "the potential for altering [the] result which might otherwise [have been] reached," 68/ and properly denied CCANP's motion to reopen the record. PID at 87-98. CCANP has provided no basis for questioning the Board's determination.

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67/ CCANP Motion to Reopen Phase I Record (August 8, 1983).

68/ On the contrary, it is clear that in its findings on Issue A the Board did consider the allegations addressed in the various inspection reports which were considered by the OIA (regarding alleged harassment and intimidation of QC inspectors, etc.). PID at 94-97.

IX. CONCLUSION AND RESPONSE TO CCANP'S REQUESTS FOR RELIEF

In the conclusion to its brief (section IX), CCANP requests two alternative remedies. First, it requests the Appeal Board to render "an opinion ab initio," stating that "the record is sufficient for the ASLAB to reach a decision" and that "there is enough evidence in the record to support license denial despite the due process violations . . . ." CCANP Brief at 89-90. CCANP would have the Appeal Board issue a new opinion based on Issue A only and ignore Issue B. Id. at 90.

While the Appeal Board has the authority to engage in a de novo review of the record, that authority has been exercised "reluctant[ly]" (see e.g., Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-422, 6 NRC 33, 42 (1977)), and CCANP has shown no basis for the Appeal Board to exercise such authority in this case. Furthermore, its request that the Appeal Board issue an opinion and findings only on Issue A is no more than a blatant effort to limit the Appeal Board's examination to that evidence CCANP believes supports its position and to ignore other relevant evidence. While, contrary to CCANP's position, the record on Issue A does not warrant license denial, it is evident that HL&P's character and competence should only be determined after a full assessment of all of the evidence under Issues A-D. Thus, CCANP's request for de novo review and an ab initio opinion is without merit.

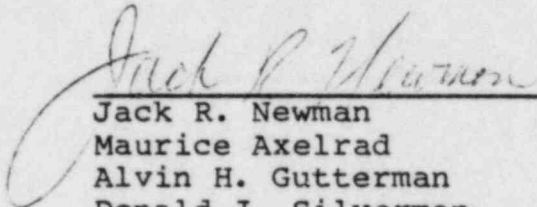
In the alternative, CCANP requests that, if "there is not sufficient evidence to warrant license denial . . .," the Appeal Board "remand the case to a new and different ASLB . . . ." CCANP Brief at 90. In effect, it argues that, if the Appeal Board finds that CCANP has been unable to demonstrate a sufficient basis for license denial, it be given a second "bite at the apple."

As described extensively above, the record does not support license denial. Absent prejudicial error, CCANP is not entitled to a further hearing in an effort to bolster its case. Despite CCANP's allegations of due process violations, no such violations have occurred and no prejudice has been demonstrated. Throughout the proceeding CCANP was afforded all of the rights to which it was legitimately entitled under the Commission's Rules of Practice and other applicable authorities.

The Board has provided a well-reasoned decision in which it has carried out the Commission's mandate in CLI-80-32 and concluded that HL&P has the necessary character and competence to be granted operating licenses for the STP. It has addressed the issues before it in a manner fully consistent with the applicable legal standards and reached conclusions which are thoroughly supported by the record.

For the reasons set forth above, CCANP's appeal should be denied.

Respectfully submitted,

  
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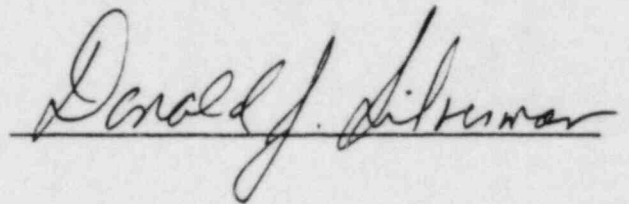
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