

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

Docket Nos. 50-498 o/c  
50-499 o/c

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NRC STAFF'S BRIEF IN RESPONSE TO BRIEF OF  
INTERVENOR CCANP ON APPEAL FROM PARTIAL INITIAL DECISION

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August 23, 1984

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

Docket Nos. 50-49804  
50-49904

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DEPT. OF SECRETARIES  
DOCKETING & SERVICE  
BRANCH

NRC STAFF'S BRIEF IN RESPONSE TO BRIEF OF  
INTERVENOR CLAMP ON APPEAL FROM PARTIAL INITIAL DECISION

I. STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The Licensing Board issued a Partial Initial Decision (PID) in this case on March 14, 1984. Houston Lighting and Power Company, et al. (South Texas Project, Units 1 and 2), LBP-84-13, slip op., 19 NRC \_\_\_\_ (1984). The project consists of two pressurized water reactors each with an output of 1,250 megawatts, located 15 miles southwest of Bay City, Texas. The operating license application for the project had been filed by Houston Lighting and Power Company (HL&P); the City of San Antonio, Texas; Central Power and Light Company; and the City of Austin, Texas (hereinafter "the applicants"), and was noticed for hearing in August, 1978.

HL&P is the lead applicant with responsibility for construction and operation of the South Texas Project (STP). Construction permits were authorized in December, 1975. Brown and Root (B&R) was awarded the engineering, construction and project management functions for STP. B&R was to formulate, establish and administer a quality assurance and

quality control program with respect to all aspects of the design and construction.

Of the five petitioners originally seeking intervention in these proceedings, two were admitted as parties -- Citizens for Equitable Utilities, Inc. (CEU) and Citizens Concerned About Nuclear Power, Inc. (CCANP). The State of Texas was also admitted later as an interested state pursuant to 10 C.F.R. § 2.715(c). CEU withdrew from the proceeding, on June 15, 1982, subject to certain conditions. :

Eight contentions (some with multiple subparts) were admitted. Of these, CEU and CCANP jointly sponsored Contentions 1 and 2, CCANP was the sole sponsor of Contention 3, and CEU was the sole sponsor of Contentions 4 through 8. After CEU's withdrawal, CCANP sought to adopt all of CEU's contentions. By the Licensing Board's Memorandum and Order dated October 15, 1982, LBP-82-91, 16 NRC 1364, CCANP was permitted to adopt only Contention 4. The remainder of the contentions sponsored by CEU only were dismissed. (Contentions 5, 6, 7 and 8)

Of the original eight contentions, the Board indicated in March, 1980 that it planned to hear contentions dealing with construction deficiencies and problems in the Quality Assurance/Quality Control (QA/QC) area on an expedited basis. This included the question of possible harassment and intimidation of QA/QC personnel on the project. This course of action was considered necessary since, if corrective action were required in these areas, it was felt it should be undertaken early in the construction schedule.

On April 30, 1980, the NRC Office of Inspection and Enforcement issued I&E Report 79-19 (Staff Exh. 46, App. D), which identified 22 noncompliances in HL&P's STP construction activities. See PID at 3. The investigation report indicated substantial deficiencies in HL&P's construction quality assurance/quality control (QA/QC) program and cast serious doubt on HL&P's ability to manage construction of the STP. Id.; Staff Exh. 46, App. D. Accompanying I&E Report 79-19 was a Notice of Violation and an Order to Show Cause, requiring HL&P to set forth its reasons why safety-related construction activities should not be halted. Id. In addition, a civil penalty of \$100,000 was proposed as a result of the items of noncompliance found in 79-19. By letters dated May 23, 1980, HL&P confirmed, with minor exceptions, the findings of 79-19 and paid the civil penalty of \$100,000. Staff Exh. 90, 91, Tr. 1368.

In its response to 79-19, HL&P identified six "root causes" which it felt were behind the items of non-compliance found. These causes were: (1) a failure to translate specifications and requirements into clear and simplified procedures; (2) inadequate documentation of nonconforming conditions and a systematic trend analysis; (3) the need for QA/QC training and indoctrination of personnel at all levels; (4) the need for stronger systems control; (5) the need for an improved audit system; and (6) the need for increased visibility and participation of upper management. Staff Exh. 91; see also CLI-80-32, 12 NRC at 283-84.

CCANP and CEU subsequently filed with the Commission requests for a hearing on the Order to Show Cause accompanying 79-19. The Commission denied those requests on September 22, 1980; however, it agreed with the

Licensing Board's previously expressed intent to hold an early hearing on QA/QC issues. The Commission also directed the Board to consider the "broader ramifications" of charges relating to HL&P's "basic competence and character." Houston Lighting and Power Company (South Texas Project, Units 1 and 2), CLI-80-32, 12 NRC 281, 291-92 (1980) (hereinafter CLI-80-32). Consequently, on December 2, 1980, the Licensing Board articulated six issues (A through F) addressing the Commission's concerns. Second Prehearing Order, December 2, 1980. See Appendix A hereto. The Board designated the hearing on CLI-80-32 Issues A through F (and on Contentions 1 and 2, which address QA/QC deficiencies) as Phase I of the operating license proceeding.<sup>1/</sup> Evidentiary hearings on Phase I commenced on May 12, 1981 and extended intermittently until June 17, 1982. Hearings were held in Bay City, Houston, and San Antonio, Texas. Limited appearance statements were invited and heard in each city, as well as at a prehearing conference held in Austin, Texas.

During the Phase I evidentiary hearings, HL&P informed the Board and parties that it was dismissing Brown & Root (B&R), their architect-engineer and construction manager. Letter from Jack R. Newman, Counsel for Applicants, to Licensing Board (dated Sept. 24, 1981); PID at 4. The Applicants later advised that they would also replace B&R as constructor. Letter from Jack R. Newman, Counsel for Applicants, to Licensing Board (dated Feb. 16, 1982) (enclosing press release). Bechtel Power Corp. (Bechtel)

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<sup>1/</sup> Hearing on Issue F, involving the adequacy of HL&P's Quality Assurance Program for Operation of STP, was subsequently deferred to a later phase of these proceedings. See Fourth Prehearing Conference Order (December 16, 1981) at 6.

assumed the duties of architect-engineer and construction manager, and Ebasco Services Inc. (Ebasco) replaced B&R as constructor. Id.; Newman letter of Sept. 24, 1981, supra. On September 28, 1981, the Applicants informed the Board that a report on B&R engineering had been prepared for HL&P by Quadrex Corporation (the Quadrex Report). Fourth Prehearing Conference Order (issued Dec. 16, 1981), at 2; PID at 5.

In order to accommodate these changes, the Licensing Board divided this operating licensing proceeding into three phases. See Fourth Prehearing Conference Order, id. The topics previously included in Phase I, plus certain issues arising from the transition from B&R to Bechtel and Ebasco, were to continue to be considered in Phase I. The Board also admitted four new parts of Contention 1 (1.8(a) through (d)) for consideration in Phase I. See Appendix A hereto. Phase II would address the substance and the handling of the Quadrex Report on engineering and design of the project and any effect it might have on the determination as to HL&P's character and competence reached in Phase I of the proceeding, as well as other design issues such as the hurricane issue raised by Contention 4. Phase III was to address issues involving quality assurance for operation (CLI-80-32, Issue F), Contention 3 (on possible overpressurization), and any remaining matters.

In the subject PID the Licensing Board also asked the Staff to present a report in Phase II of this proceeding on the performance of HL&P, Bechtel and Ebasco since the close of Phase I of the hearing. This report is to include the effectiveness of Bechtel and Ebasco procedures in the areas which have been subjects of the concluded Phase I litigation



(including violations, nonconformances, and relations between construction and quality control (QC) personnel, as well as a Staff evaluation of the implementation of HL&P's quality assurance-quality control (QA/QC) program for construction). PID at 5-6, 56-57.

Thus, in summarizing its conclusions and the status of the subject proceeding, the Licensing Board stated (PID at 6):

Phase I is now complete. Accordingly, this Partial Initial Decision addresses and resolves CLI-80-32 Issues A through E, and Intervenor's Contentions 1 and 2. For reasons hereafter spelled out, and based on the entire record, we find no basis at this time for concluding (1) that the reasonable assurance findings contemplated by 10 CFR § 50.57 cannot be made, or (2) that HL&P currently lacks managerial competence or character sufficient to preclude an eventual award of operating licenses for STP. These conclusions will be subject to modification, if appropriate, as a result of our consideration of Quadrex Report issues in Phase II. In addition, we are requiring that the NRC Staff (and the Applicants and other parties if they wish) report to us during the Phase II evidentiary hearings concerning safety-related construction activities (including implementation of the QA/QC program) following the assumption of duties by Bechtel and Ebasco. We also expect that, during the consideration of Issue F (QA for operation) in Phase III, the Applicants and Staff will update (as appropriate) the testimony presented with respect to Issue C dealing with HL&P's organization for operation. [Footnotes deleted].

With these caveats, the Licensing Board made the following findings as to the Phase I issues and contentions:

CLI-80-32 Issue A

If viewed without regard to the remedial steps taken by HL&P, would the record of HL&P's compliance with NRC requirements, including:

- (1) the statements in the FSAR referred to in Section V.A. (1) of the Order to Show Cause;

- (2) the instances of noncompliance set forth in the Notice of Violation and the Order to Show Cause;
- (3) the extent to which HL&P abdicated responsibility for construction of the South Texas Project (STP) to Brown & Root; and
- (4) the extent to which HL&P failed to keep itself knowledgeable about necessary construction activities at STP,

be sufficient to determine that HL&P does not have the necessary managerial competence or character to be granted licenses to operate the STP?

In resolving what it viewed as the "most important" (PID at 31) of the character traits in the context of these proceedings -- truthfulness and candor -- the Board found that there was no basis for determining that HL&P had been anything other than open and frank with the NRC staff and the Board. That conclusion was not only based upon an inquiry into the facts surrounding subpart (1) of Issue A, but was also premised upon relevant Staff testimony of witnesses who had interacted with HL&P as well as on the consideration of certain allegations made (on which no proof was offered) by CCANP. PID at 33-37. Thus, the Board ruled that resolution of subpart (1) of Issue A raised no disqualification on the basis of character or competence.

To answer subpart (2) of Issue A, the Board necessarily considered the next relevant character indicator, HL&P's willingness to carry out the QA program and the manner in which HL&P responded to noncompliances or nonconformances. The Board found that the history of nonconforming or noncomplying conditions (including incidents of harassment) was attributable to a lack of corporate experience rather than constituting an indictment of corporate character. PID at 40. In the Board's view,

attempts to achieve quality are pertinent to character; to the extent the fact that HL&P failed to take action sooner might be considered a character deficiency, the "strong" steps it did take to correct inexperience (without regard to the effectiveness of these steps) counterbalances any deficiency demonstrated by the former inaction. Id. at 41.

The character trait of abdication of responsibility is expressly addressed in answering the subpart (3) question. The Board decided that no impermissible or disqualifying abdication had occurred. PID at 42-44. While there may have been a lack of awareness, among other problems (discussed infra pp. 34-38, 46-47), this reflected a defect in competence rather than character. PID at 43.

The final subpart (4) inquiry in Issue A addressed the extent to which HL&P kept itself informed about STP. In short, the Board found inadequacies here; yet, these inadequacies -- like those found in subpart (3) -- were attributed to inexperience. PID at 44-45. The inexperience, while certainly related to competence, was not of a nature that would be an independent and sufficient basis to deny HL&P an operating license.

To sum up Issue A with respect to character, subject to later Phase II proceedings, the Board found that HL&P had not demonstrated character deficiencies with regard to the relevant traits of truthfulness, willingness to comply with regulations, responsibility or knowledge that would preclude the Applicants from being granted operating licenses. PID at 46.

In reference to the competence of HL&P, the Board concluded that, prior to the 79-19 investigation, HL&P lacked one of the important elements of technical competence; that element was experience. The Board

found, however, that experience is obtainable by several means. HL&P hired more experienced personnel, and its involvement in STP by itself provided a degree of experience. While Issue A excludes consideration of corrective actions, the Board did evaluate under Issue A both HL&P's prior experience and the existence of newly acquired experience. PID at 49.

Similarly, with regard to organizational structure and the requirements of HL&P's QA programs and procedures, the Board stated that, subject to further proceedings in regard to efficacy of changes in the QA/QC programs, "HL&P's past questionable competence was not of such magnitude as to preclude the eventual award of operating licenses." PID at 51. The concept of competence clearly entails the ability to improve productive activity. Id. Even a static picture of HL&P's competence viewed at the time of the 79-19 Report would encompass this ability. Id. In answering the "competence" questions under Issue A, the Board found that indeed HL&P was not so bereft of expertise, technical or managerial, that it was barred from gaining experience. Id.

On character and competence, therefore, the Board resolved Issue A in favor of the Applicants.

#### CLI-80-32 Issue B

Has HL&P taken sufficient remedial steps to provide assurance that it now has the managerial competence and character to operate STP safely?

This issue required, in the Board's view, an evaluation of the effectiveness of the numerous steps taken by HL&P to correct the deficiencies identified in addressing Issue A. PID at 51. The Board

reached the preliminary conclusions (to be supplemented in the next Phase of the hearings) that sufficient remedial steps had been taken, based on the evidence adduced thus far, to assure that HL&P now had the managerial competence and character to operate STP safely. PID at 56.

CLI-80-32 Issue C

In light of (1) HL&P's planned organization for operation of the STP; and (2) the alleged deficiencies in HL&P's management of construction of the STP (including its past actions or lack of action, revised programs for monitoring the activities of its architect-engineer-constructor and those matters set out in Issues A and B), is there reasonable assurance that HL&P will have the competence and commitment to safely operate the STP?

The Board concluded that there is reasonable assurance that HL&P will have the competence as well as the requisite commitment to safety to operate the STP safely. PID at 59. This conclusion was based solely on the preliminary information currently of record and is subject to being updated in Phase III. Id. at 59-60. Intervenor CCANP submitted no proposed findings and conclusions on Issue C. Id. at 59. It simply asserted that since Issues A and B must be answered in the affirmative and negative, respectively, the answer to Issue C must be negative. Id. The Board was unwilling to reach such a conclusion, since its holding on Issues A and B did not parallel those of the intervenor.<sup>2/</sup> Id.

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<sup>2/</sup> The intervenor's failure to submit proposed findings with regard to many issues and contentions could be deemed, in most cases, an abandonment or waiver of the right to argue those issues on appeal. See 10 C.F.R. § 2.754(b); Consumers Power Company (Midland Units 1 and 2), ALAB-123, 6 AEC-33I, at 332-33 (1973); Boston Edison Company (Pilgrim Nuclear Power Station), LBP-74-57, 8 AEC 176, at 177 (1974); Northern States Power Company (Prairie Island Nuclear

CLI-80-32 Issue D

In light of HL&P's prior performance in the construction of the STP as reflected, in part, in the Notice of Violation and Order to Show Cause dated April 30, 1980, and HL&P's

responses thereto (filings of May 23, 1980, and July 28, 1980), and actions taken pursuant thereto, do the current [Bechtel/Ebasco] construction QA/QC organizations and practices meet the requirements of 10 C.F.R. Part 50, Appendix B; and is there reasonable assurance that they will be implemented so that construction of STP can be completed in conformance with the construction permits and other applicable requirements?

On this Issue, as with Issue C above, CCANP merely referenced its conclusions on Issues A and B. The Board, not agreeing with the conclusions of the intervenor on those earlier issues, considered the evidence of record (PID at 60-62) and concluded that neither through cross-examination nor its proposed filings had CCANP succeeded in refuting direct evidence offered by the other parties on this issue. PID at 60. Accordingly, the Board found that the present QA/QC organizations and practices for the STP met the requirements of 10 C.F.R. Part 50,

2/ FOOTNOTE CONTINUED FROM PREVIOUS PAGE

Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, at 864 (1975). In this case, however, the Licensing Board expressly rejected such a ruling. PID at 29. The Board cited the fact that CCANP was never explicitly directed to file any proposed findings. Id. citing Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-709, 17 NRC 17 (1983). Neither the Fermi case nor the Board's ruling, however, relieves the intervenor from either the duty to adduce evidence upon which it bases its contentions or the necessity of providing citations to the record in its appellate brief. 10 C.F.R. 762(g); see generally Public Service Electric and Gas Company (Hope Creek Generating Station, Units 1 and 2), ALAB-394, 5 NRC 769 (1977); Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, at 413 (1976). This inadequacy is discussed infra at pp. 18-19.

Appendix B, and that, currently, there is reasonable assurance that these organizations and practices will be implemented so that construction of STP will be in conformance with the permits and regulations, subject to developments in Phase II of the hearing. Id. at 60.

CLI-80-32 Issue E

Is there reasonable assurance that the structures now in place at the STP (referred to in Sections V.A.(2) and (3) of the Order to Show Cause) are in conformity with the construction permits and the provisions of Commission regulations? :  
If not, has HL&P taken steps to assure that such structures are repaired or replaced as necessary to meet such requirements?

The Board held that at the close of the Phase I hearings no evidence was developed to indicate that any in-place structure was inadequate; further, it stated that HL&P had undertaken a comprehensive verification program relative to existing structures and took adequate corrective action where deficiencies were detected. PID at 63. The Board cited CCANP's failure to counter any of the "extensive direct evidence" offered by the other parties and states that with respect to intervenor's view of earlier "widespread noncompliance" the "evidence of record is largely to the contrary." Id. at 63-64.

Contentions 1 and 2

After disposing of the foregoing "Commission's" CLI-80-32 Issues, the Licensing Board then addressed the Intervenor's contentions.<sup>3/</sup> PID at 66-86.

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<sup>3/</sup> These Contentions are set out fully in Appendix A hereto.

Those contentions allege that there is no reasonable assurance that STP can be operated safely as a result of deficiencies in construction and in the QA/QC program. Id. at 66. The contentions enumerate these deficiencies and assert that the findings required pursuant to 10 C.F.R. § 50.57(a)(1) and (2) cannot be made; moreover, the contentions assert that the particular deficiencies violate specified criteria of 10 C.F.R. Part 50, Appendix B.

The contentions raise two separable issues: (1) whether each enumerated deficiency by itself demonstrates nonconformance with the construction permits or NRC regulations (including 10 C.F.R. Part 50, App. B) and prevents a finding of reasonable assurance that STP can be operated safely; and (2) whether the deficiencies, when aggregated, are indicative of an overall construction QA/QC program that is, or was, so defective that there can be no reasonable assurance that STP has been constructed adequately and can be safely operated. Id. at 66.

The Board stated that the latter and broader issue is completely subsumed by the CLI-80-32 issues--particularly Issues D and E. Id. Intervenor CCANP, in recognition of that fact, declined to submit proposed findings on all but subpart 7(e) of Contention 1 and on all of Contention 2. Id.; CCANP Proposed Findings, at 134.

The Board chose to address the contentions and not treat them as abandoned. PID at 67. To avoid redundancy, however, the Board addressed Contentions 1 and 2 narrowly and made findings and conclusions as to each alleged deficiency. Id. The adequacy of the overall QA/QC program was treated in the PID's findings and opinions on the CLI-80-32 issues. Id.



As to each Contention and subpart the Board found:

Contention 1.1. This alleges that a surveying error resulted in the eastern edge of the Mechanical-Electrical Auxiliary Building (MEAB) being constructed one foot short of specifications, in violation of App. B, §§ X and XI of 10 C.F.R. Part 50. The applicants admitted the error and conceded that there was no procedure for inspection of actual surveys at the time the error was made. PID at 68. The Board concluded that the absence of a survey inspection procedure constituted a violation of quality assurance regulations, but that it was not of such a magnitude as to prevent the issuance of an operating license. PID at 72.

Contention 1.2. This contention alleges that, as a result of a field construction error, extensive voids exist in the reactor containment building walls in violation of App. B, §§ IX and X to 10 CFR Part 50. PID at 73. The voids were repaired upon discovery and no residual safety problem existed. Id. The Board, however, found that the original existence of the voids was caused by a failure to follow quality control procedures in violation of Criterion IX (as well as Criterion II) of Appendix B, and that the failure of QC personnel to discover certain voids constituted a violation of Criterion X of Appendix B. PID at 74. The Board cited conditions that led to these voids as a "prime example" of B&R's (as well as HL&P's) lack of experience. Id. at 75.

Contention 1.3. Contention 1.3 alleges that a field document relating to cadweld inspections had been lost in violation of 10 CFR

Part 50, Appendix B, §§ VI and XVII. PID at 75. The document had in fact never been prepared. The Board found that the failure to prepare and retain the document was a violation of Criterion VI and Criterion XVII, but that there was no safety significance to these particular violations. Id. at 76.

Contention 1.4 and 1.5. These contentions involved membrane seals (1.4) and steel reinforcement bars (1.5) in the containment structure. PID at 77-78. The Board ruled that separate NRC investigations as well as the uncontroverted and unimpeached testimony of applicant's witnesses foreclosed any finding of violation of the applicable regulations. Id.

Contention 1.6. With respect to the cadwelds that are at issue under this contention, the Board cited NRC investigations which revealed documentation deficiencies but did not substantiate any allegations of falsification of cadweld records. Id. at 78. The absence of documentation was held not to have a significant impact upon the proper construction or safe operation of the facility. Id. at 79. The Board went on to find that, although the document deficiencies were at least technical violations of Appendix B, Criterion IX and X (as well as VI), they did not prevent issuance of an operating license.

Contention 1.7(a) through (e). The allegations contained in Contentions 1.7(a) through (d) involved alleged failures to follow procedures in regard to design changes. The Board found that no violation had occurred in regard to these matters. PID at 80-81.

Contention 1.7(e) alleged that QC inspectors had been, and were being, harassed by assaults and threats and, as a result, were not performing their inspections. The Board held that although there had been some harassment of QC inspectors the record showed that the inspectors continued to perform their inspections. PID at 83. The Board concluded that there was no violation of Criterion III and IX, although, the incidents did represent violations of the general implementation requirements of Criterion II of Appendix B. Id. at 82-83. Subject to other proof to be offered in Phase II of the hearings, the Board viewed the record, as it stands, as not precluding the necessary findings of "reasonable assurance" under 10 C.F.R. § 50.57. Id. at 83.

Contention 1.8. In this Contention, subparts (a) through (d), CCANP made four allegations derived from the investigative results of I&E Report 81-28 (Staff Exh. 124). Id. at 84. Each of the allegations asserts a violation of one or more of the criteria of 10 C.F.R. Part 50, Appendix B. Id. The Board found, however, that I&E Report 81-28 did not support CCANP Contention 1.8 but, rather, rebutted it. Hence, no violation was found.

Contention 2. With regard to the falsification of construction records alleged in this Contention, the Board found that the incident substantiated by I&E Report 77-03 was discovered first by HL&P, which notified the NRC itself. The Board found no culpability on the part of HL&P or B&R. Id. at 86.

From the Licensing Board's PID, Intervenor CCANP now takes an appeal, "Citizens Concerned About Nuclear Power, Inc. (CCANP) Brief on Appeal from Partial Initial Decision," (filed July 8, 1984) (hereinafter CCANP Appeal). The NRC staff hereby responds to that brief.

II. ISSUES PRESENTED ON APPEAL

- (A) Whether the CCANP Brief is Adequate under Commission Rules and Precedent Governing Appellate Briefs?
- (B) Whether the Licensing Board's Definitions of the Statutory Requirements of Character and Competence of an Applicant Are Correct as a Matter of Law?
- (C) Whether the Licensing Board's Formulation of Issues A through E Adhere to the Directive of the Commission in CLI-80-32?
- (D) Whether the Findings of the Licensing Board as to Each of the CLI-80-32 Issues and as to the Intervenor's Contentions Are Supported by the Evidentiary Record?
- (E) Whether Intervenor CCANP Has Been Denied the Due Process of Law or Procedural Rights Guaranteed under the Constitution, Administrative Procedure Act or NRC Regulations in the Phase I Hearings of the Licensing Board?

III. DISCUSSION

A. The CCANP Brief Is Not Adequate under Commission Rules and Precedent.

Although the Licensing Board may have excused intervenor CCANP from submitting detailed proposed findings on each issue and contention (see PID at 29), this did nothing to relieve the appellant of its duty under the regulations to put its appeal brief in an appropriate form. Section 2.762(d)(1) of the Commission's Rules of Practice provides:

An appellant's brief must clearly identify the errors of fact or law that are the subject of the appeal. For each issue appealed, the precise portion of the record relied upon in support of the assertion of error must also be provided.  
10 C.F.R. § 2.762(d)(1).

A failure to comply with this provision is grounds for striking the filing, either on motion of a party or by the Commission (or the Appeal Board when it sits instead of the Commission pursuant to 10 C.F.R. § 2.785). 10 C.F.R. § 2.762(g); see Public Service Electric and Gas Co. (Hope Creek Generating Station, Units 1 and 2), ALAB-394, 5 NRC 769, at 770 (1977).

The intervenor-appellant brief does not comply with the aforementioned applicable regulations. The parties, in attempting to respond, as well as the Appeal Board, in reaching a decision, are hampered by the unfocused and unsupported instances of "error" CCANP alleges in the Licensing Board's opinion. See Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, at 786-87 (1979), vacated in part on other grounds, CLI-80-8, 11 NRC 433, at 434-35 (1980). The brief contains virtually no precise citation to the record

in support of its factual assertions. It is clear that CCANP disagrees with the Licensing Board's formulation (and resolution) of the issues directed by the NRC in CLI-80-32, supra 12 NRC at 291; nevertheless, little, if any, attempt at presenting or qualifying other controlling or helpful precedent is made by the intervenor. While CCANP may be free to pursue all issues on appeal, see Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-709, 17 NRC 17, at 20-21 (1983), the unwillingness to do so in its appeal brief must be deemed an abandonment of those issues. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, at 413 (1976); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-270, 1 NRC 473 (1975).

Given the CCANP filing and the Commission rules and precedent on appellate briefs, the intervenor's appeal must be considered, if at all, to be limited to the Board's CLI-80-32 Issues A and B only (see supra, pp. 6-11). The Staff, however, will address all the substantive Issues and Contentions that were before the Board in Phase I, as well as respond to the "Due Process" and procedural rights denial allegations intervenor suggests in its filing with the Appeal Board. See Illinois Power Company (Clinton Power Station, Unit Nos. 1 and 2), ALAB-340, 4 NRC 27, at 52, n.39 (1976).

B. The Licensing Board's Definition of the Statutory Requirements of Character and Competence of an Applicant are Correct as a Matter of Law.

(1) Legal Standards Respecting Character and Competence

The Atomic Energy Act of 1954, Section 182(a), as amended, (42 U.S.C. § 2232(a)) requires, inter alia, that an applicant for a license

submit sufficient information to enable the Commission to determine whether that applicant has the character and competence to engage in the licensed activity.

Neither the statute nor the NRC regulations specifically state standards for determining whether an applicant has the required character. See Metropolitan Edison Company (Three Mile Island Nuclear Generating Station, Unit 1), ALAB-772, slip op. at 12-14 (issued May 24, 1984). As to competence, 10 C.F.R. § 50.40 provides:

In determining that a license will be issued to an applicant, the Commission will be guided by the following considerations:

(a) The processes to be performed, the operating procedures, the facility and equipment, the use of the facility, and other technical specifications, or the proposals, in regard to any of the foregoing collectively provide reasonable assurance that the applicant will comply with the regulations in this chapter, including the regulations in Part 20, and that the health and safety of the public will not be endangered.

(b) The applicant is technically and financially qualified to engage in the proposed activities in accordance with the regulations in this chapter.

(c) The issuance of a license to the applicant will not, in the opinion of the Commission, be inimical to the common defense and security or to the health and safety of the public.

Despite the absence of specific legislative definition, there are Commission precedents which aid in "grasping the slippery concept" of character and competence required by the Act. See Metropolitan Edison, slip op., supra, at 14.

(a) Character

In Metropolitan Edison Co., id. at 12-14, (the TMI restart proceedings), the Appeal Board equated the term "character" in section 182(a)

of the Atomic Energy Act (42 U.S.C. § 2232(a)) with "management integrity" and recognized that it "always involves consideration of largely subjective factors." It cited the dictionary definition of "character" as "a composite of good moral qualities typically of moral excellence and firmness blended with resolution, self-discipline, high ethics, force and judgment." Id. at 12, n.9, citing Webster's Third New International Dictionary, at 367 (unabridged ed. 1971). The Appeal Board went on to recognize the great responsibility of NRC licensees to the public, and quoted Hamlin Testing Laboratories, Inc. v. AEC, 357 F.2d 632, 638 (6th Cir. 1966), where the court stated: "We can imagine no area requiring stricter adherence to rules and regulations than that dealing with radioactive materials, from the viewpoint of both public health and national security." Id. at 13-14.

The Licensing Board below similarly recognized the need for NRC licensees to have good character. It cited the same dictionary definition as the Appeal Board had in the TMI proceeding and looked to those qualities of character which had a nexus to protecting the public health and safety. PID at 15-20.<sup>4/</sup> The Licensing Board stated that the

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<sup>4/</sup> The aspects of character looked to in a licensing proceeding must have a rational nexus to the activity being licensed. Thus in Schware v. Board of Bar Examiners of New Mexico, 353 U.S. 232, 239 (1957), bar examiners could properly look at an applicant's honesty because it had a rational connection to fitness to practice law. Cf. Konigsberg v. State Bar, 353 U.S. 252, 262-63 (1957). Similarly, in FCC v. WOKO, 329 U.S. 223 (1946), the Court ruled that the applicant's failure to follow FCC regulations and a lack of candor could be examined in determining whether a radio station license should be renewed.



relevant character traits are those which show that the applicant has a "willingness and propensity, or lack thereof, to observe the Commission's health and safety standards." PID at 15-16.

In Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), CLI-80-32, 12 NRC 281 (1980), the Commission recounted the history of the South Texas project and stated that several investigations, items of noncompliance, action letters, apparent false statements in the FSAR and allegations of harassment, intimidation and threats directed to QA/QC personnel are relevant to the competence and character of the applicant.

The Commission in several other recent cases has cited a variety of factors as pertinent to whether an applicant has the requisite elements of character to be granted a license. In Consumers Power Co. (Midland Plant, Units 1 and 2), CLI-83-2, 17 NRC 69, 70 (1983), the Commission stated, "Not only are material false statements and omissions punishable under Sections 234 and 186 [42 U.S.C. § 2282, 2236] of the Atomic Energy Act, but deliberate planning for such statements or concerns on the part of applicants or licensees would be evidence of bad character that could warrant adverse licensing action even where those plans are not carried to fruition." Similarly, in Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-82-1, 15 NRC 225, 227 (1982), the Commission directed issuance of notice of violation for material false statements and noted apparent lack of attention by applicant to its responsibilities concerning communication of information.

In earlier cases the Atomic Energy Commission highlighted similar factors as bearing on "character." In the Matter of Hamlin Testing

Laboratories, 2 AEC 423 (A.E.C. 1964), aff'd sub nom. Hamlin Testing Laboratories v. AEC, 357 F.2d 632 (6th Cir. 1966), the Commission denied renewal application citing pattern of untruthful reports and continued willful violations of license requirements. In Coastwise Marine Disposal Co., 1 AEC 581 (1960), aff'd, 1 AEC 619 (1961), the Commission revoked a license based on repeated violations of license terms and willful false statements demonstrating "unfitness" to continue as a licensee. Earlier that year, the Commission had revoked a license based on repeated and willful violations of that license, numerous uncorrected noncompliances and willful false statements. X-Ray Engineering Co., 1 AEC 466 (1960).<sup>5/</sup>

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<sup>5/</sup> Other NRC cases have also examined relevant aspects of character for NRC licensees. See, e.g., Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-738, 18 NRC 177 (1983) (Appeal Board granted motion to reopen on issues related to management integrity based on alleged violations of technical specifications, noncompliance with proper operating procedures and destruction and falsification of records); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 897 (1982) (statement by Appeal Board that intentional withholding of relevant and material information might call into question an applicant's character); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-32, 14 NRC 381 (1981) and LBP-82-56, 16 NRC 281 (1982), remanded in part, ALAB-772, 19 NRC \_\_\_\_ (issued May 24, 1984) (Licensing Board addressed management attitude toward certain incidents of cheating on operator qualification examinations as a factor relevant to management integrity); Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station), 45 Fed. Reg. 80334-36 (December 4, 1980) and 46 Fed. Reg. 20341-42 (April 3, 1981) (NRC staff issued and later withdrew show cause order where submittal of false statements was not made with intent to deceive and appropriate corrective action was taken).

As shown by this survey of the cases, an applicant's honesty and candor are of particular import in NRC proceedings.<sup>6/</sup> The NRC in performing its mission is dependent upon complete and accurate information from an applicant. The Commission has stated:

In order to fulfill its regulatory obligations, NRC is dependent upon all of its licensees for accurate and timely information. Since licensees are directly in control of plant design, construction, operation, and maintenance, they are the first line of defense to ensure the safety of the public. NRC's role is one primarily of review and audit of licensee activities, recognizing that limited resources preclude 100% inspection.

As the Commission has stated in the past:

Our inspection system is not designed to and cannot assume such tasks [to provide full inspection of construction activities]. Rather, we require that licensees themselves develop and implement reliable quality assurance programs which can assume the major burden of inspection. Consumers Power Company (Midland Plant, Units 1 & 2), CLI-74-3, 7 AEC 7, 11 (1974).

We require instead a regime in which applicants and licensees have every incentive to scrutinize their internal procedures to be as sure as they possibly can that all submissions to this Commission are accurate. Petition For Emergency And Remedial Action, CLI-78-6, 7 NRC 400, 418 (1978).<sup>7/</sup>

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<sup>6/</sup> As the Licensing Board noted, "it is clear that truthfulness contemplates not only false or misleading statements but the completeness or comprehensiveness of information provided by an applicant to the Commission." PID at 16-17 (citations omitted). The ASLB also emphasized the Commission's citation in CLI-80-32 of "cases suggesting that willful misrepresentations to the Commission, or representations made with disregard for their truth, could be grounds, without more, for license denial." PID at 23 (footnote omitted).

<sup>7/</sup> The Appeal Board recently relied on this position in Metropolitan Edison, ALAB-772, slip op., at 13. See also Virginia Electric & Power Company (North Anna Power Station, Units 1 and 2), CLI-76-22, 4 NRC 480, 486-87 (1976), aff'd sub nom. Virginia Electric & Power Company v. Nuclear Regulatory Commission, 571 F.2d 1289 (4th Cir. 1978).

As a natural corollary to the requirement of truthfulness and candor, the consequences of making a false statement to the NRC could be as severe as license denial or revocation. 42 U.S.C. § 2236; In the Matter of Hamlin Testing Laboratories Inc., 2 AEC at 428-29 (1964), aff'd sub nom. Hamlin Testing Laboratories v. AEC, 357 F.2d 632 (6th Cir. 1966); Metropolitan Edison Company (Three Mile Island Nuclear Generating Station, Unit 1), ALAB-772, slip op. at 13-14 (issued May 24, 1984) (citing and quoting with approval Hamlin Testing). In this proceeding, the Commission in CLI-80-32 specifically directed the Licensing Board to inquire into alleged false statements made by HL&P. 12 NRC at 291.

Prior violations of law or regulations might also be viewed by the NRC as an indication of whether an applicant has the requisite character to be granted an operating license. Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-78-18, 8 NRC 293 (1978), upon remand, LBP-79-19, 10 NRC 37, 56-94 (1979), aff'd and modified, ALAB-577, 11 NRC 18 (1980), rev'd and vacated on other grounds, CLI-80-12, 11 NRC 514 (1980); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-5, 11 NRC 403 (1980); Virginia Electric Power Company (North Anna Nuclear Station, Units 1 & 2), LBP-77-68, 6 NRC 1127 (1977); In the Matter of Hamlin Testing Laboratories Inc., supra.<sup>8/</sup> To the extent, therefore, that

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<sup>8/</sup> See also Mester v. United States, 70 F.Supp. 118 (E.D.N.Y. 1947), aff'd. per curiam, 332 U.S. 749 (1947); United Broadcasting Co. v. FCC, 565 F.2d 699 (D.C. Cir. 1977); TV 9, Inc. v. FCC, 495 F.2d 929, 937-940 (D.C. Cir. 1973), cert. denied, 419 U.S. 986 (1974).

HL&P has violated the statute or regulations governing nuclear activity, such violation may be considered with respect to the question of its character.

Although the Commission recognized that past violations could in the most severe cases provide an independent and sufficient basis for license denial (80-CLI-32, 12 NRC at 291), the willingness of an applicant to correct deficiencies, or remove management officials involved, should for its part reflect well on corporate character. As the Licensing Board noted:

A change in corporate character can change an applicant's character, as can education and experience. . . . [I]f an applicant, whose character may have been unsatisfactory in the past, demonstrates a reformed and adequate present character, then we may find that there is reasonable assurance that it will observe the Commission's health and safety standards. PID at 22-23.

In Armored Carrier Corp. v. United States, 260 F.Supp. 612 (E.D.N.Y. 1966), aff'd, 386 U.S. 778 (1967), reh'g denied, 389 U.S. 924 (1967), the rationale for such a view was expressed as follows:

The argument that past willful violations should, *per se*, bar a grant of authority in the present and for the future is one that looks backward and appears transfixed. Examination of the past should only be useful in assessing the prospective conduct of the applicant.

Only in extreme cases would an applicant's past course of conduct be considered disqualifying, per se, without regard to remedial steps taken by that applicant. In those cases, the facts should demonstrate that character is tainted beyond redemption. The Licensing Board applied this rationale to the definition of character (including Issue A) and correctly rejected the argument of CCANP that character was an immutable attribute. As the Commission stated in CLI-80-32, defects in character "could form"

grounds for license denial. It did not say they must automatically lead to denial of a license no matter the circumstances and no matter what remedial steps the applicant might have taken to improve its character. See Shearon Harris, 10 NRC 37, at 56 et seq; North Anna, 6 NRC 1127, at 1150-51.<sup>9/</sup>

In its directive to the Board below, CLI-80-32, the Commission also stated that either abdication of responsibility or an unacceptable failure on the part of HL&P to keep itself informed about construction activities could form a basis for license denial as a character defect. 12 NRC at 291. Indeed, as CCANP frequently recites, such abdication of responsibility or failure to keep informed was viewed by the Commission as capable of forming an "independent and sufficient basis" for license denial standing alone. 12 NRC at 291.

In an FCC case, the D.C. Circuit addressed the renewal of a radio broadcast license where the licensee had allegedly abdicated responsibility for its programming by failing to stay informed with regard to the Station's activities. Cosmopolitan Broadcasting Corp v. FCC, 581 F.2d 917 (D.C. Cir. 1978). The Court held that the licensee's failure to do so could form a sufficient basis for revocation. Id.; see also Continental Broadcasting v. FCC, 430 F.2d 580 (D.C. Cir. 1971). HL&P is under a similar duty to stay informed and maintain responsibility for the

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<sup>9/</sup> See also Central Florida Enterprise, Inc. v. FCC, 683 F.2d 503 (D.C. Cir. 1982); Kidd v. FCC, 302 F.2d 873, (D.C. Cir. 1962); Bray Lines v. United States, 353 F.Supp. 1240 (W.D. Okla. 1971), aff'd, 414 U.S. 802 (1973); Slay Transportation Co. v. United States, 353 F.Supp. 555 (E.D. Mo. 1973).

STP. CLI-80-32, supra at 291. The Applicant cannot avoid responsibility because Brown & Root failed to comply with regulations. Pittsburgh-Des Moines Steel Company, ALJ-78-3, 8 NRC 649 (1978); Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), LBP-75-54, 2 NRC 498, 503 (1975), aff'd, modified and rev'd in part on other grounds, ALAB-324, 3 NRC 347, 357 (1976).

The Intervenor's approach to the issue of character, both in its proposed findings of fact and its brief on appeal, fails to deal with the rationales and the holdings of relevant precedent. No "regulatory vacuum" exists as to the meaning of "character" in NRC or other administrative agency precedent, as CCANP implies. Metropolitan Edison Co., ALAB-772, supra, slip op. at 11. CCANP ignores the precedents by setting out six abstract qualities of character<sup>10/</sup> and then argues why HL&P actions do not measure up to these abstractions CCANP has selected. See CCANP Appeal at 37-38. The Licensing Board rightly rejected these abstractions as being "so broad and ill-defined that analyzing them would give little assistance" to resolving the issues in this proceeding. PID at 18. As the Board stated, "what is necessary is a nexus of a particular trait to particular performance standards contemplated by the Atomic Energy Act on NEPA and the NRC's implementing regulations and guides." Id. at 19.

The Licensing Board, correctly, on the basis of the precedents, identified traits or attributes of "character" of an Applicant with a

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<sup>10/</sup> These were "foresight", "perception", "judgment", "resolve", "integrity", and "values." CCANP Appeal at 37-38.

rational nexus to the nuclear regulatory regime. That is the required analytical framework. These traits are: truthfulness and candor in dealing with the agency; prior violations of law and regulations and/or willingness to comply therewith; abdication of responsibility; and failure to keep informed. PID at 19-20.

(b) Competence

The matters relative to judging managerial competence are more clearly defined than the traits examined in evaluating corporate character. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-5, 11 NRC 408 (1980); Virginia Electric & Power Company (North Anna Nuclear Power Station, Units 1 & 2), LBP-77-68, 6 NRC 1127 (1977); Shearon Harris, LBP-79-19, supra.<sup>11/</sup> With regard to managerial competence, the applicant's management is reviewed for adequacy of organization and technical ability, prior performance as evidence by I&E Reports, management attitude, and the response to (or plans for confronting) technical problems.

In Metropolitan Edison Company, CLI-80-5, supra, the Commission particularly pointed to the areas of staffing, resources and past actions as germane to the issue of managerial competence. The Commission further stated when looking at these broad areas, that the Licensing Board should examine more specific matters such as the appropriateness of plant and corporate organization; staff technical qualifications; quality of

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<sup>11/</sup> See also "Guidelines for Utility Management Structure and Technical Resources," NUREG-0731.



corporate and plant management; and, inter alia, the interaction of site staff and corporate management. The Commission emphasized that it was not providing standards by which to judge managerial competence but only outlining questions it deems pertinent to the management issue. 11 NRC at 410.<sup>12/</sup>

Inquiries into such areas as corporate "commitment" in North Anna, LBP-77-68, supra, and "managerial attitude" in Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-106, 6 AEC 182 (1983), are also examples of areas where licensing boards are obtaining reasonable assurance that an applicant has the requisite competence to operate a nuclear power plant, irrespective of the precise term used. See PID at 12.

The Licensing Board's approach in the instant PID is not different from that in the foregoing cases. See PID at 13. As the Board stated, the Commission had not established definitive standards by which to judge managerial competence; rather, the Commission has only identified questions it deems pertinent to an inquiry into competence. Id. The Board correctly interprets the scope to be that envisioned by the

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<sup>12/</sup> The approach indicated in Metropolitan Edison Co., CLI-80-5, is currently followed by the Staff in evaluating managerial competence. This is evidenced by "Guidelines for Utility Management Structure and Technical Resources," NUREG-0731. This NUREG establishes guidelines for management organization and experience, plant staffing, training, as well as onsite and offsite resources for both routine and emergency conditions. The applicant's compliance with meeting these various guidelines is then weighed together with other relevant material in determining whether the applicant has the requisite managerial competence for a license. The Staff has evaluated the management of HL&P against the guidelines of NUREG-0731 and found it to be properly organized and prepared for eventual plant operations (Crocker, et al., direct ff. Tr. 10721). Intervenors presented no evidence on this issue.

Commission in CLI-80-32. Id. at 14. In light of this, the Board states the appropriate inquiry as: 1) whether an applicant's staff and management have sufficient technical and managerial expertise and experience (i.e., demonstrated knowledge, judgment, and skill) to construct the plant properly and operate it safely, 2) whether an applicant's staff and management are organizationally structured so as to permit and encourage the unhindered application of their expertise and experience, and 3) whether an applicant's programs and procedures require the application of that expertise and experience and are consistent with goals of the Commission's regulations and the statute. PID at 14-15.

In its filing (CCANP Appeal, at 12), the intervenor states that the Board confuses the analysis of "competence" by use of the term "management competence" to include "quality of management" and the "adequacy of organization," which it views as going to "character" rather than "competence." See CCANP Appeal at 12. Precedent, however, indicates that these are matters of competence. See North Anna, LBP-77-68, supra; Midland, ALAB-106, supra; Metropolitan Edison, CLI-80-5, supra, ALAB-772, slip op. at 11-13, 61-62.<sup>13/</sup> The Licensing Board correctly applied these precedents and included an inquiry into the quality of management and organization structure in its evaluation of competence.

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<sup>13/</sup> The intervenor attempts to distinguish Metropolitan Edison Co., CLI-80-5, on a claim that the Commission did not treat character and competence as discrete attributes as it has later done in this proceeding in CLI-80-32. CCANP Appeal at 12. Assuming arguendo that such a distinction is made, it has no impact on the validity of the Board's reasoning. The test of whether an applicant can safely operate a nuclear plant (i.e., competence) is not lessened by including an assessment of character in that evaluation.

In the recent Appeal Board decision on Three Mile Island (Metropolitan Edison Co., ALAB-772, slip op. at 6, supra), the Appeal Board noted that "a necessary element" in determining whether a licensee has demonstrated its ability to operate a nuclear plant safely is the efficacy of its actions to remedy past deficiencies. Similarly, in North Anna, LBP-77-68, supra, VEPCO's management conceded that it erred in the past, but maintained that substantial improvement had been made. The Licensing Board there found that although VEPCO lagged in upgrading its management to provide the necessary leadership and control to ensure the proper operation of a nuclear power plant, it appeared that management improved as regulatory requirements increased and that management responded to NRC staff recommendations. The North Anna Licensing Board concluded, as a result of VEPCO's current management's responsiveness in correcting items of noncompliance and its commitment to safe operation, the applicant had demonstrated its qualification to run the facility. 6 NRC at 1144.

The Licensing Board here followed a similar approach. Competence can be gained by experience. It can be learned. As the Board stated:

In short, the record clearly demonstrates that HL&P (and B&R), prior to the 79-19 Investigation, lacked one of the important elements of technical competence: experience. Experience, by its very nature, however, is obtainable by several means, including the hiring of experienced personnel or even by the mere passage of time (i.e., the more time one spends on a project, the more experience one acquires). HL&P hired more experienced personnel, and its involvement in STP by itself provided a degree of experience. Although Issue A excludes consideration of corrective actions, we do not believe we can fairly evaluate HL&P's competence to

complete and operate the STP without taking into account the qualifications and experience of the personnel who actually will be engaged in those tasks. Therefore, we are evaluating under Issue A both HL&P's prior experience and the existence of newly acquired experience such as that possessed by Mr. Goldberg. When HL&P's own increased experience is coupled with the additional experience provided by Bechtel and Ebasco, we believe that HL&P has remedied the lack of experience which has plagued the STP. PID at 49; see also PID at 21-24.

The Board properly left a determination as to the "effectiveness of the newly acquired experience" for consideration under CLI-80-32 Issue B. Id. at 49. :

The remainder of the CCANP filing dealing with the competence issue argues with the PID's assessment of the import of HL&P's actions and what, in CCANP's view, was an overindulgent propensity of the Board to excuse HL&P's transgressions on the grounds of inexperience. While the former question, the Board's assessment of the facts, is more properly dealt with under another section herein (see infra pp. 39-54), the latter question, with regard to experience, should now be addressed.

As we have indicated, in CLI-80-32 the Commission suggested that some defects in competence (or character) could be so irremediable that license denial is warranted. This is not to say that competence cannot be gained through wider and longer experience. Again, the intervenor confuses the Commission's "could form" basis for license denial with what CCANP feels must be a "should form" standard. The Board did not refuse to consider that such a case could exist; it found, rather, that this was not such a case. Its "line of inquiry" (PID at 14-15) is that which is called for by the regulatory scheme and the precedents. What the Board ruled was that, with regard to competence, HL&P was not so hopelessly

without competence -- managerial and technical -- that no possibility for improvement existed.

In sum, with regard to the applicable standards of competence, the Board set out the appropriate inquiry on the basis of the relevant precedent.

C. The Licensing Board's Formulation of Issues A through E Adheres to the Directive of the Commission in CLI-80-32.

The intervenor-appellant asserts that the PID ignores the issues as presented by the Commission in CLI-80-32. CCANP Appeal at 4. CCANP argues that its own understanding and formulation of those issues preserves the intent of the Commission and is "called for" in this case.<sup>14/</sup> Id. at 11. The intervenor is mistaken on both scores. The Licensing Board properly concluded that improvements in character and competence, as well as past errors, must be looked to in judging whether a license should be issued under the standards of the Commission. See PID at 21-24.

In formulating Issue A, the Board explicitly excluded from consideration the effectiveness of any remedial steps taken by HL&P. PID at 30. Having previously set the appropriate standards by which to judge competence and character, i.e., establishing the required nexus

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<sup>14/</sup> This "understanding and formulation" is presumably limited to Issue A principally and, at most, to Issues A and B, since those were the only two CLI-80-32 Issues addressed by the CCANP appeal.

between a course of conduct and an attribute (character) and setting out the appropriate inquiry into management capabilities and expertise (competence), the Board then applied these standards to HL&P's record of compliance. Id. This record of compliance entailed the four areas outlined in Issue A: material false statements; instances of noncompliance and violation of the regulations; alleged abdication of responsibility; and the alleged failure to keep informed. PID at 30-31.

These specific areas are the only allegations with the required nexus to character and competence and the only basis -- on the facts of this case -- upon which license denial could be warranted, if at all. The intervenor is incorrect when it states that "the Board refuses to consider the predictive value of past acts standing alone[.]" CCANP Appeal at 5. Issue A is the express result of the Board's recognition that past acts could provide an independent and sufficient basis for disqualification on the grounds of character or competence standing alone. See PID at 23-24.<sup>15/</sup> This formulation heeds the directive of the Commission in CLI-80-32. The intervenor's quarrel with the formulation of Issue A is really no more than the same argument it has with the PID's correct adoption of the relevant definition of character and competence.

Such a ruling, moreover, is not contrary to the formulation of Issue A. Did HL&P possess the inherent competence to gain the required

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<sup>15/</sup> As the board stated: "We would agree with CCANP, however, that there may be some character defects that are so serious that they are in fact uncorrectable, at least in the absence of a 'radical change in control of [the] corporation.'" [Footnote omitted] (Emphasis in original). PID at 23.

specific competence? The Licensing Board answered that it did. No examination of remedial steps is required. One merely looks at the applicant's capacity or propensity to improve, given its past activities. The question of what remedial steps were taken and their effectiveness is then examined under Issue B. An affirmative answer to Issue A does not work to constrain automatically the answer to Issue B. This applicant, or any applicant, could have the capacity to improve, but still have failed to do so. As the Board stated, questions concerning the applicant's character and competence "permeate" all the Issues. PID at 7.

This underlying competence is what the Board was examining in the case of HL&P. Experience could be gained, as indeed it was. The applicant was not disqualified from gaining experience because it may not have originally had the necessary competence to build and operate the plant safely. The Intervenor confuses this view. Its arguments with regard to "Inexperience" make that confusion manifest. CCANP Appeal at 16-22. It fails to acknowledge that competence is not immutable. As the cases point out, if character can be improved, surely competence can as well.

For CCANP, there would be but one issue: Has HL&P ever taken, or failed to take, any action that could be viewed as lacking or deficient in one of the six abstract character qualities it enumerated ("foresight", "perception", "judgment", "resolve", "integrity" and "values") or has HL&P ever manifested any degree of inexperience without regard to any other factors? The Licensing Board declined to adopt such a simplistic approach. PID at 21-24. Indeed, if the Board were to formulate the single issue of Phase I as CCANP had presented it, the Board would have

necessarily ignored the Commission directive to consider the "broader ramifications" of the past actions. See CLI-80-32, 12 NRC 291. Intervenor fails to recognize that those broader ramifications need not be damning of HL&P's qualifications. If broader ramifications are to be considered, then the issue cannot be as limited as CCANP would establish. That consideration, if not expressly, at least assumes implicitly that the totality of events surrounding the applicant and the STP be examined.

The fact that the Commission at the time of issuing CLI-80-32 was aware of remedial steps undertaken by HL&P is somehow viewed by CCANP as precluding any inquiry into those remedial steps in ascertaining character and competence. CCANP Appeal at 1. The applicant's character and competence would be deemed immutable as of the time of the 79-19 Report, in CCANP's view. This is neither the approach called for by the precedent cited above nor is it required by CLI-80-32. It could be argued that if the Commission were aware of all of HL&P's remedial steps at the time of CLI-80-32, the Commission would not have remanded the case if it thought there were immutable defects in character or competence. At best, the Commission saw the issue as unresolved and left it to the Board below to determine. Contrary to CCANP's assertion that "[n]owhere does the Commission suggest that remedial measures are to be considered," such a suggestion is inherent in the Commission's refusal simply to rule that by virtue of its past conduct HL&P had demonstrated disqualifying acts. The Licensing Board left "room" to find an independent basis for disqualification under Issue A. PID at 23. The Board disagreed with CCANP that the facts justified such a finding. The appropriateness of that application of the facts is addressed infra at pp. 39-48.



Thus, the formulation of Issue A comports with the Commission's directive and the applicable precedent. It permits an examination of the facts in issue to determine the existence of the required character and competence. The intervenor fails to demonstrate or explain why Issue A is erroneous.

It is CCANP's position that CLI-80-32 Issue B should not have been addressed by the Licensing Board. CCANP's only specific allegation of error surrounding Issue B centers on the Licensing Board treating the termination of Brown & Root as a remedial act cognizable under Issue B. CCANP Appeal at 54-56. Since such "error," if it is indeed error, is one of application of the facts rather than formulation of the issue, it is more appropriately addressed below under the fourth issue presented to the Appeal Board. See pp. 48-50, infra.

Similarly, CCANP would not reach Issues C through E at all. Intervenor's appellate brief (like intervenor's proposed findings on these issues) is silent as to any allegation of error in regard to the formulation of these issues. To the extent that CCANP's brief argues with the definition of qualifications or application of the facts to issue A and B, it is addressed elsewhere herein. See discussion and cases cited herein, supra at pp. 19-34, see also infra at p. 50.

D. The Findings of the Licensing Board Are Supported by the Evidentiary Record.

The evidentiary record supports the findings of the Licensing Board on each of the issues considered below. The intervenor's brief only addresses "errors" with regard to Issues A and B and the Staff's chief focus will be on the Board's findings of fact (hereinafter FOF) and application of the facts to those two Issues.

(1) Issue A.

The Board, in addition to issuing findings recounting the evidence relevant to Issue A (PID at 103-178 (FOF 13-173)), sets out its evaluation of that evidence in "Board Conclusions on HL&P's Character and Competence, as Reflected in Issue A" (PID at 178-183 (FOF 174-183)), and devoted a substantial part of its Opinion to evidence dealing with "Issue A: Managerial Character and Competence" (PID at 30-51). The Board there applied the evidence to the four facets of character and the competence inquiry it formerly found relevant to this proceeding. See discussion at pp. 19-34, supra. CCANP disputes the Board conclusions on each of these matters. CCANP Appeal at 27-37. The Staff discusses each of these matters seriatim.

(a) Truthfulness, Honesty and Candor

A prime concern of the Commission in CLI-80-32, and of the applicable precedent on character, is the applicant's honesty and candor in dealing with the Commission. Specifically, the Commission directed the Board to investigate the alleged false statements or inconsistencies contained in the FSAR. 12 NRC 291, n.4. Intervenor contends that whatever the

reason for these false statements or inconsistencies, their existence demonstrates carelessness on the part of applicant and, thus, implicates applicant's character qualifications. CCANP Appeal at 27-28. It argues that the Board's "analysis of the evidence on these traits is inadequate and incorrect." Id. at 27.

In considering the false statements, the Board found that:

[C]ertain statements in the FSAR relating to construction techniques and tests for backfill did not in fact accurately reflect the construction and testing carried out by HL&P through its contractor, B&R. Those FSAR statements, however, were for the most part not inaccurate when written. As the Applicants and Staff have asserted, the lack of conformance with FSAR requirements should be viewed as nonconformances with specified procedures rather than as material false statements. In the limited circumstance where non-conforming performance had in fact occurred prior to the submission of the FSAR, HL&P had not become aware of the discrepancy until long after such submission. PID at 32.

See also PID 114-118 (FOF 24-34); Peterson/White, ff. Tr. 6162, at 9-10; Tr. 6188-91, 6205, 6207-10, 6216 (White, Peterson); Crossman, et al., ff. Tr. 1000, at 12; Tr. 9862-63 (Shewmaker). Further, the Board found no intent on the part of HL&P to file any false statements and that this isolated incident did not adversely reflect on Applicant's character. PID at 32-33, 117-118.

The Board also considered the honesty and candor of HL&P in dealing with the NRC staff. PID at 33-34. The Board cited numerous examples of HL&P being open and candid with the NRC in support of its finding concerning HL&P's truthfulness. Id.; see e.g., Tr. 9854-55, 9516 (Phillips); Tr. 1948-49 (Oprea). See also PID at 158-159, 173 (FOF 121, 158). The Board did not -- as CCANP asserts (CCANP Appeal at 28) -- rule that only deliberate and known false statements could reflect on character. It assessed applicant's honesty and candor under the totality of circumstances. Here, as before, CCANP's disagreement is not with the

Board's application of the facts to the issue being determined, instead it quarrels with the Board's understandable reluctance to stretch any error by HL&P to meet one of CCANP's character "traits." See PID at 117-118 (FOF 31-34). The legal support for that reluctance has been examined above. (See supra, at pp. 19-29).

The Board also addressed the aspects of honesty and candor that CCANP had dealt with under the heading of "Integrity." PID at 34. Intervenor accused the applicant of "a deliberate attempt to deceive the Commission," particularly in regard to a study on alternative QA organizations to monitor the construction of STP. PID at 34-35. The Board, in rejecting CCANP's arguments, gave careful consideration to the alternative QA organizations evaluated and the reasons for the adoption of one over the other. PID at 35-36; Oprea, et al., ff. Tr. 1505, at 18-19, 24-25, 119-126; Staff Exh. 48, at Exhibit 1; Tr. 1363-64 (Jordan); Tr. 2084-99, 2104-12, 5462-74 (Oprea); Tr. 1844-47 (Amaral). The intervenor gives no support for its claim that alternative QA programs were unreasonably restricted by HL&P's contract with Bechtel. CCANP Appeal at 28-29; see PID at 35. Moreover, the intervenor made no case as to why any particular form of organization is superior or preferable to another. PID at 36, n.37.

Intervenor has also claimed that HL&P failed to meet a commitment made in response to the Notice of Violation. CCANP Appeal at 29. It offered no proof below on this allegation (see PID at 36-37) and has not elaborated upon this matter upon appeal (see CCANP Appeal at 29).<sup>16/</sup>

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<sup>16/</sup> The appeal brief takes the position that, "[t]he evidence speaks for itself; the statements were false." The Board conceded that there may have been inaccuracies; but, the evidence did not speak to how this inaccuracy reflected on HL&P's character. The intervenor has now had a second opportunity to demonstrate this. It has chosen, however, not to do so for the benefit of the Appeal Board, either.

CCANP's final assertion is founded upon alleged inconsistencies in the testimony of Mr. Don D. Jordan concerning the reasons for assigning Mr. Oprea to the STP full-time. CCANP Appeal at 29. Intervenor claims the Licensing Board erred in that its analysis was cursory and inadequate. The Licensing Board rejected this claim by stating that, "We do not regard the statements as necessarily inconsistent but only as elaborations of earlier statements." PID at 37. The appeal fails to cite the alleged contradictions with any record reference, and the bald assertion of error should be dismissed.<sup>17/</sup>

The Board concluded that there was "no basis for determining that HL&P was anything other than open and frank with the NRC staff and this Board." PID at 37, 158-159, 179. It not only found no adverse evidence implicating applicant's character, but went on to point out that the evidence on this question enhanced HL&P's character.<sup>18/</sup> Id. The Board's findings were supported by the evidentiary record below and intervenor has not demonstrated how those findings with regard to this question were in error.

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<sup>17/</sup> Furthermore, should the unknown sections alluded to by CCANP here be those which the Staff speculates are involved (Jordan, ff. Tr. 1223, at 7; Tr. 1342-43 (Jordan)), then any fair reading of Mr. Jordan's testimony supports the Board's view that the latter testimony constituted an explanation or elaboration and was not contradictory.

<sup>18/</sup> These findings, of course, are subject to modification in Phase II of the hearings with regard to HL&P's promptness in forwarding the Quadrex Report.

(b) Response to Nonconformance and Noncompliance.

The second indication of character that the Licensing Board found pertinent to the issuance of a license was the applicant's response to reported nonconformances and noncompliances. It stated, "In terms of a character trait, the manner in which HL&P responded to noncompliances and nonconformances may be depicted as the willingness or desire of corporate officials to carry out a QA program 'to the letter.' [citing] Midland, ALAB-106, 6 AEC at 184." PID at 38.

CCANP, however, here faults the Licensing Board for a failure to look at the violations alone, without considering HL&P's willingness to correct and prevent violations. CCANP Appeal at 30-32, 40-41. Primarily it must be emphasized that the Board did not ignore HL&P's past violations. It stated, ". . . HL&P was not entirely successful in translating its desires [in regard to a successful QA program] to reality." PID at 38.<sup>19/</sup> What is also important in judging character are the efforts and willingness of an applicant to run a proper QA program. As stated in Midland, "[O]f no less significance [than technical qualifications]

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<sup>19/</sup> It was recognized in Union Electric Co. (Callaway Plant, Unit 1), ALAB-740, 18 NRC 343, 346-47 (1983) and Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 & 2), ALAB-756, 18 NRC 1340, 1344-45 (1983), that though errors will occur in construction and in the implementation of a QA program, these errors do not necessarily prevent the issuance of an operating license. See also Carolina Light & Power Co. (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 & 4), LBP-79-19, 10 NRC 37, 41-43 (1979), examining both the motivation and the performance of applicant's management in a construction permit proceeding. What it required is that a facility be constructed so that its operation will not endanger the health and safety of the public, and that the applicant show a propensity and a willingness to follow the requirements of the Commission.

is the matter of managerial attitude. Unless there is a willingness -- indeed, desire -- on the part of the responsible officials to carry it out to the letter, no program is likely to be successful." Midland, supra, 6 AEC at 184. See PID at 41-42.

While the Board stated that the evidence on this question was not uniform (PID at 38), it found HL&P clearly demonstrated a strong willingness to carry out a successful QA program. The Board rejected CCANP's claim that attempts to achieve quality should not be taken into account in evaluating character or competence. PID at 41. In determining character per se, these attempts are relevant. See PID at 41-42.

As evidence of this "willingness" the Board found, HL&P began corrective action well before the NRC had completed its investigation and issued the 79-19 Report. PID at 39. This is supported by the evidentiary record. Oprea et al., ff. Tr. 1505, at 24-29 (Oprea), 78-83 (Frazar); Tr. 10073-74 (Phillips); Jordan, ff. Tr. 1223, at 6-7; Tr. 10090-93 (Phillips, Crossman, Hubacek). HL&P also initiated a number of procedural measures to counteract the incidents of harassment of QA/QC personnel. PID at 39; Staff Exh. 47; Brown, ff. Tr. 3646, at 45-50; Warnick, et al., ff. Tr. 8032, at 43.

The intervenor implies that the efforts of Messrs. Jordan and Oprea to correct problems were inadequate and not illustrative of a willingness to comply with the regulations. CCANP Appeal at 31-32. This view does not comport with the evidence of record or the Board's holding with due regard to that evidence. PID at 42; Jordan, ff. Tr. 1223, at 5-7; Tr. 1260-69 (Jordan); Tr. 2113, 2243 (Oprea); Tr. 5074 (Oprea); Tr. 9866,

9936 (Hayes); Tr. 1966 (Amaral); Tr. 9506-07 (Seidle); Tr. 9516, 9939 (Phillips).

As to CCANP's other two assertions with regard to this subpart of Issue A, the hiring of a consultant to review the implementation of the program in 1980 and the alleged "unwillingness" of HL&P to spend resources "to attract and keep top flight, experienced nuclear personnel," the brief makes no record citation or any explanation how the Board was in error on these claims. Id. Consequently, these assertions are unsupported and should be dismissed.<sup>20/</sup>

As the Board found most significant with regard to the history of compliance subpart of Issue A, HL&P took the important step of replacing its less experienced architect-engineer-constructor with two considerably more experienced organizations. PID at 40; Staff Exh. 131, at 7; Tr. 10082 (Hall).

The intervenor may be correct that willingness to respond to violations is the "minimum necessary;" however, it is the nature of that commitment and the magnitude of the efforts undertaken that should be determinative of character and competence. This latter aspect of willingness to comply by HL&P was examined by the Board and found to reflect favorably on the applicant's character and competence.

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<sup>20/</sup> Moreover, the record does show that HL&P hired consultants and devoted substantial resources to improve QA at South Texas. See e.g. PID at 157, 189-198 (FOF 118, 200-226).



The Board correctly concluded that the steps applicant was willing to take were strongly indicative of favorable character. While there were nonconforming or noncomplying conditions in the history of the STP, none of these standing alone was an independent or sufficient basis to disqualify HL&P on the grounds of character or competence. (PID at 41-42, 178-181). When these were considered in light of the steps taken by HL&P, moreover, their significance with regard to character and competence is greatly diminished. Id. The Board's findings are supported by the evidence of record.

(c) Abdication of Responsibility

The Board began by finding that at upper management levels HL&P did not abdicate responsibility for B&R for the QA/QC program. PID at 42. CCANP says this finding was wrong, "particularly in light of all the evidence to the contrary," but no evidence is cited. CCANP Appeal at 33. The contrary evidence, showing no abdication of responsibility, was extensive. See, e.g., PID 155-161 (FOF 113-125); Tr. 9506 (Seidle); Jordan, ff. Tr. 1224, at 8-9; Tr. 1389-93 (Jordan); Tr. 9516, 9939 (Phillips); Tr. 1920-21 (Amaral); Oprea, et al., ff. Tr. 1505, at 49-50; Tr. 5457-62 (Oprea); Tr. 10488 (Goldberg). See also PID at 182 (FOF 184). Thus, CCANP's assertion of error is without merit.

At lower management levels of HL&P, the Board did find that effective control was not exercised prior to the Show Cause Order. PID at 42. This was attributed to inexperience and excessively long chains of command rather than to abdication of responsibility. PID at 42-43. The Board considered these and other deficiencies as reflecting questions as to

competence rather than character. Id. at 44. Nevertheless, to the extent competence was implicated it was not so severely questionable that improvement could not be effected. Going back to the proper standard applied (see pp. 29-34, supra), if HL&P remained competent to acquire additional experience in the nuclear field, it was not barred from acquiring a license. The Board found correctly that no abdication of responsibility took place to the extent that would disqualify HL&P from ever being awarded an operating license. :

(d) Attempts to Stay Informed

The Board concluded that: "HL&P received a large quantity of information about the STP but was unable to assess the significance of much of it." PID at 44. The Board, as did all witnesses, ascribed this situation to a lack of experience rather than a lack of character (PID) at 45, 161-164, 182-183 (FOF 126-132, 186). Intervenor, however, maintains that this was a "lack of perception" and, therefore by intervenor's definition, a character defect. CCANP Appeal at 37-38. Here, as with virtually all of the Board's other findings, CCANP continues to assail the relevant definition of character rather than the Board's application of the facts.

As the Board said, the facts relevant to this question are to some extent the same as those bearing upon HL&P's exercise of responsibility. PID at 44. Part of this problem stemmed from the lack of an adequate system of trending nonconforming conditions during the period prior to the 79-19 Report. Id. at 44-45. The excessively long communications lines between personnel on-site and upper management was also referenced

here. Id. The Board correctly found that every expert witness that addressed this question attributed the recurring problems to inexperience (which was remediable and, in fact, remedied) and not to the character of HL&P. PID at 45; Tr. 1714-16, 1739, 1743, 1850-51, 1897-1901, 1934-35 (Amaral); Tr. 9859 (Phillips); Tr. 9936-37 (Hayes); see also Oprea, et al., ff. Tr. 1505, at 47-48; Tr. 2238-45, 2264, 3395, 3422 (Oprea). The Board -- on the facts -- found correctly that experience was wanting, not character or the underlying competence to gain that experience.

(e) Summary of Issue A

On the basis of the preceding four-part inquiry, of all the facts in the record, the Board correctly concluded (subject to Phase II of this proceeding) that HL&P had not demonstrated character or competence deficiencies that would preclude the applicant from being granted operating licenses for the STP. PID at 45-46, 178-183 (FOF 174-187). Intervenor has shown no reversible error or provided legal and factual support for its position on this Issue.

(2) Remedial Steps under Board Issue B

The intervenor's assertions of error with regard to Issue B<sup>21/</sup> are limited to: the Board's treatment of the termination of B&R as a remedial

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<sup>21/</sup> The Licensing Board's discussion of Issue B appears at PID 51-57, 99-102, 184-199 (FOF 188-226). The Board concluded that although HL&P's competence was not always adequate, it has improved; and that subject to further examination in Phase II of this proceeding, HL&P now appears to have the competence to receive an operating license. Id.

act and the fact that key management figures remain in place with "very little real change" in the attitude or experience of "top management." CCANP Appeal at 54-56.<sup>22/</sup>

With regard to the termination of B&R, CCANP states that HL&P took "an inordinately long time" to make that decision. CCANP at 55. How this reflects on character or competence is not explained in the brief. Assuming, nevertheless, that the delay is meant to be an indictment of either or both attributes, the Board addressed this (PID at 43-44) and found it (as well as that delay with regard to other steps) "understandable" given the magnitude of the changes which proved necessary. CCANP offers no proof, or argument for that matter, as to just how early this termination should have taken place to redeem HL&P's character in its view.

Mr. Oprea and Mr. Jordan are the focus of intervenor's complaint about top management remaining in place. CCANP Appeal at 55-56. The earlier discussion of the Board's views with regard to the competence and commitment of these individuals will not be repeated here. See discussion herein at pp. 44-45, supra. Under Issue A, the Board considered their qualifications with reference to the character and competence of HL&P and did not find it wanting. Moreover, the Board under Issue B was examining the remedial steps that had been taken, not what else could be done to

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<sup>22/</sup> Presumably, these specific errors are secondary to CCANP's primary position that: "Issue B never belonged in this proceeding." CCANP Appeal at 54. In light of the previous discussion of the legal standards applicable, with which the intervenor obviously disagrees, the Staff makes no further argument here, but respectfully refers the Board to that earlier discussion. See herein pp. 19-34, supra.

change HL&P; thus, dismissal of certain individuals who are currently "on the job" is not an appropriate inquiry here. The Board was properly looking to what had been done (including, for example, the hiring of Mr. Goldberg) not what could or should possibly have been done.

In sum with respect to Issue B, the intervenor chooses to ignore the abundant evidentiary support for the efficacy of HL&P's remedial steps and mistakenly relies on extraneous facts. The Licensing Board properly concluded that, subject to further supplementation of the record in Phase II of this proceeding,<sup>23/</sup> HL&P appears to have taken sufficient remedial steps to have acquired the managerial competence and character to operate the South Texas Project. See PID at 199 (FOF 226).

(3) Board Issues C, D, and E

Intervenor's Appeal makes no mention or citation of any error with regard to the Board's resolution of the remaining three CLI-80-32 Issues; thus, to the extent the Licensing Board was correct in reaching these other Issues, CCANP apparently concedes that the Board's findings were correct and supported by the record on Issues C, D and E.

(4) Intervenor's Contentions<sup>24/</sup>

The intervenor states that it will only address the Board's rulings on those contentions which bear significantly on character and/or competence.

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<sup>23/</sup> See PID at 56-57, 99-102, 284-285.

<sup>24/</sup> These are set out at Appendix A hereto.

CCANP Appeal at 49. It alleges that the Board made these rulings narrowly and failed to consider their aggregate effect on the reasonable assurance that STP can be operated safely. PID at 49. Further, intervenor states that while the Board recognized the pertinence of the findings on these Contentions as to the CLI-80-32 Issues, it fails to incorporate those findings into Issue A. Id. This argument proves too much. The Board did state it had considered overall adequacy of the program elsewhere in the PID and was avoiding redundancy by addressing the character and competence question with regard to each. Id. The assertion that the Board ignored these facts is simply untrue.

Contention 1.1 relates to a surveying error that resulted in the Mechanical-Electrical Auxiliary Building being constructed one foot short. PID at 67-68, 248-250 (FOF 318-326). Applicants admitted their error and acknowledged that it arose from poor surveying practices, while maintaining that the absence of a survey inspection procedure did not violate 10 C.F.R. Part 50. The Board rejected this position and found the absence of a surveying procedure was a violation. PID at 72. Despite this ruling, the subsequently adopted practices were found to be adequate and the Board made no finding that character or competence was implicated as a result of the violation. Id.

Intervenor attempts to tie these findings directly to an Issue A disqualification by arguing that inexperience here was no excuse. CCANP Appeal at 50. The Board, however, made no mention of that factor with regard to this violation. Once the error was recognized, HL&P took the necessary steps to insure against similar occurrences after properly reporting the error to the Staff. PID at 68, 248-50. The Board's

reluctance to go as far as finding the "negligent attitude" that CCANP argues it should have found is supported by the record. Id. Cf. Union Electric Co., ALAB-740, supra; Pacific Gas & Electric Co., ALAB-756, supra.<sup>25/</sup>

On Contention 1.2, CCANP disputes the Board's finding that B&R's inexperience with nuclear construction projects was the cause of voids in the concrete walls. PID at 74-75. The Board called this instance a prime example of such inexperience. Id. Intervenor states that "a more logical explanation" is "cost and schedule pressures." CCANP Appeal at 51. It then proposes to rewrite the PID on the basis of that "explanation." Id. at 52. CCANP offers absolutely no evidentiary citation for that proposition.

As the Board noted, the record supports inexperience as the reason for the voids. PID at 75, 250-254 (FOF 327-337); Tr. 9509-10 (Taylor); Tr. 7087, 7129, 7162-63 (Singleton); Murphy, et al. (Contentions), ff. Tr. 6522, at 12-13; Seidle, et al., ff. Tr. 9205, at 36 Tr. 7153-55 (Artuso). As to the factors relating positively to applicant's character and competence: the voids were discovered by construction personnel (Tr. 7086, 7131, 7133-34, 7151 (Singleton); Tr. 7080-81 (Hernandez); the voids were promptly reported to the NRC (Murphy, et al., ff. Tr. 6522, at 10-13; Seidle, et al., ff. Tr. 9205, at 36-37); the voids were repaired and the Staff reviewed these repairs

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<sup>25/</sup> CCANP also states that the applicant's position on the applicability and scope of Appendix B-at trial indicates evidence of bad character. CCANP Appeal at 50-51. This assertion is without merit. The applicant has a right to advance a good faith legal argument at trial without the fear of being found to be lacking in character if it ultimately does not prevail on that argument.

and found them adequate (Murphy, id. at 11-19; Seidle, id. at 37; Staff Exh. 113, at 4-5; Staff Exh. 188, at 4-5); and prior to operation the walls will be subject to further tests (Murphy, et al. (Contentions), ff. Tr. 6522, at 20; Tr. 6888-89, 7197-98 (Hernandez)). The Board's findings were supported by the evidentiary record.

With regard to Contention 1.7(a), the intervenor states that it disagrees with the Board's approach to the function of QC inspection. CCANP Appeal at 52. As it did below, CCANP on appeal again fails to attempt to controvert any of the evidence. See PID at 80, 261-262 (FOF 368-371). As the Board found, it was not the function of quality control inspectors to see that changes were executed in accordance with the original design. PID at 80. That was the job of the design engineers. Id. CCANP, however, states that "the record supports that a memorandum [apparently providing that craft inspectors were not to pass on design changes] was written to prevent QC inspectors from confirming that Appendix B had been complied with." CCANP Appeal at 52. There is, however, no citation to where this support lies. The assertions of CCANP here are unfounded.

The next contention CCANP addresses is Contention 1.7(e) involving harassment of QC inspectors. CCANP Appeal at 52. See PID at 81-83, 266-275 (FOF 381-399). This is the only contention upon which it submitted findings below. CCANP contends that the fact that HL&P could not get Brown and Root to control harassment and intimidation is highly probative evidence of HL&P's lack of character and competence. Id. There is no question that there were incidents of harassment. PID at 82. Notwithstanding this, HL&P took the most effective step possible in ending this harassment by replacing Brown and Root. Thus, to the extent Brown



and Root's managerial competence was questionable, HL&P removed that question by replacing Brown and Root with a more experienced contractor. This reflects favorably on the character and competence of HL&P. In addition, no evidence of record supports the allegation that QC inspectors were not performing their jobs. PID at 82, 266-74 (FOF 382-396).

As to Contentions 1.8(a) and (b) involving access engineering problems, the intervenor offers no evidence as to why the "reverse is true" of the Board's ruling. CCANP at 54. See PID at 84, 275-277; (FOF 400-405). The Board's ruling no violations of regulation was shown and that HL&P promptly acted to correct the design problems is well supported by the record. Staff Exh. 124, at 3-5; Tr. 10,011 (Phillips); Tr. 10201 (Overstreet); Frazar, et al., ff. Tr. 10123 at 5-6. The same lack of evidence by CCANP and record support for the Board exists with respect to findings or Contentions 1.8(c) and (d) dealing with QA procedures. See PID at 84, 277-279 (FOF 406-412). Staff Exh. 124, at 2, 6-8; Frazar, et al., ff. Tr. 10123, at 2, 10-11. The Board correctly found on the basis of this uncontroverted evidence that the contentions had been rebutted and that no violation existed. PID at 279.

Taken as whole or individually, the Board's resolution of the Intervenor's contentions was supported by the record.

E. Intervenor was not Denied its Due Process or Procedural Rights under the U.S. Constitution, the Administrative Procedure Act, or the NRC Regulations

The intervenor contends that in the conduct of the hearing and in the PID its Due Process and other procedural rights were systematically violated. CCANP Appeal at 56-57. These alleged violations took various

forms according to CCANP. Id. at 57-75. An examination of each allegation demonstrates that each is unfounded.

The initial charge of "clear bias" on the part of the Board centers on CCANP's disagreement with the Board's "heavy reliance" on "inexperience" of the applicant for its opinion and findings. Id. at 58. CCANP states that it had no notice that the Board intended to use "inexperience" in this manner. Id. Intervenor views the Board's rejection of "CCANP's extensive work" on the positions and standards it had urged as constituting a Due Process violation or bias. Id. at 59. CCANP confuses not prevailing on the merits with bias. The Board's decision, as discussed earlier herein, was supported by the applicable case law. Resolution of issues against one side suggests neither bias nor error, without more. In administrative hearings as in court cases, rulings and findings made in the course of a proceeding are not in themselves sufficient reasons to believe the tribunal is biased for or against a party. Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903, 923 (1981). What CCANP views as "hostility" in the PID is merely the Board stating the relevant law and applying the facts of record to that law.

Intervenor then renews its charge of bias with regard to Judge Hill, a member of the Board below. CCANP Appeal at 63. The Commission has already ruled on this claim. Houston Lighting & Power Company (South Texas Project, Units 1 and 2), CLI-82-9, 15 NRC 1363 (1982). Absent a showing of new extra-judicial facts, which has not been offered or even suggested, this allegation is improperly raised here.

The Board's regulation of cross-examination is challenged next by CCANP. Intervenor first objects to the Board's requirement for a filing of a Cross-Examination Plan. CCANP Appeal at 64. Such plans specifically were recommended by the Commission in its Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 457 (1981). CCANP then challenges the Board's imposition of time limitations on cross-examination. CCANP Appeal at 64-65. The Commission rules give the Board the authority to limit cross-examination if it is argumentative, repetitive or cumulative. 10 C.F.R. § 2.757(c). In exercising its discretion to so limit cross-examination which appears improper, a licensing board may insist on some offer of proof or other advance indication of what the cross-examiner hopes to elicit. Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, at 1096 (1983); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-461, 7 NRC 313, 316 (1978). CCANP makes no showing of how any offer of proof below was wrongly rejected.

Even if cross-examination is wrongly denied or restricted, such action does not constitute prejudicial error in and of itself. Louisiana Power Light, supra, at 1096; Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), CLI-82-11, 15 NRC 1383, at 1384 (1982). The complaining party must show actual prejudice in the ruling. San Onofre, supra, ALAB-673, 15 NRC 697. Here, CCANP has made no showing of prejudice. It urges simply that it "was attempting to probe critical areas of testimony." CCANP Appeal at 65.

With regard to the allegedly erroneous specific evidentiary rulings of the Board listed by CCANP as at Tr. 9773-74, 9374, 9837-39, 9914, as

well as the "at least thirty-five (35) erroneous rulings" it says are contained somewhere in Tr. 9326-9914 (CCANP Appeal at 66), the intervenor makes no mention of what these were, makes no argument as to why these rulings were in error, and makes no demonstration of any prejudice stemming from these rulings. Such bald allegations of error should be summarily dismissed. 10 C.F.R. § 2.762(d).

As to the denial of the intervenor's request for a delay in the start of the hearing for the personal convenience of its representative, no Due Process or procedural rights violations exists. The Appeal Board formerly denied this identical request. Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-637, 13 NRC 367, 370-71 (1981).

At pages 68 to 69 of its brief, CCANP argues that the Board failed to answer, by way of findings of fact and conclusions of law, Issue A in these proceedings. This alleged failure, it is argued, denied intervenor its right under Section 557 of the Administrative Procedure Act (5 U.S.C. § 557(c)) "of never really [being] on notice of what was being litigated in this proceeding." CCANP Appeal at 69. The Board's finding, conclusions, and reasoning on Issue A are apparent from the most cursory review of the PID. See, e.g., PID at 45-46, 50-51, 178-183. Intervenor casts the reluctance of the Board to resolve Issue A in its favor as a failure to answer that issue at all. With regard to being put on notice as to the import of the "remedial steps" evidence, the Commission directive in CLI-80-32, the prefiled testimony of the other parties, and the prehearing conference with the Board should have been sufficient "to bring home"

this fact to even a casual observer of the proceedings, let alone a party. Further, the Second Prehearing Conference order of December 2, 1980, stressed the importance of remedial steps.

Intervenor's next argument goes back again to the area of the Board's regulation of cross-examination. CCANP Appeal at 69-70. It asserts that the Board violated its rights under the APA by limiting its cross-examination to that which was within the scope of the direct examination. Id. at 70. Such a limitation is proper. Louisiana Power and Light Company, supra; Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-673, 15 NRC 688, at 698, aff'd, CLI-82-11, 15 NRC 1383 (1982). Consequently, no violation of procedural rights is established here.

CCANP goes on to challenge the use of prefiled written testimony in this proceeding. CCANP Appeal at 71. The brief cites a number of arguments and reservations that have been made with regard to written testimony in general. Id. at 71-72. Intervenor failed to discover, or acknowledge, that prefiled written testimony is specifically contemplated as being appropriately used in an agency licensing case by the Administrative Procedure Act. 5 U.S.C. 556(d). The Commission has properly adopted this device by regulation. 10 C.F.R. § 2.743(b). CCANP objections to the use of written testimony, therefore, do not support any finding of error.

Intervenor also objects to the testimony on cross-examination of witness panels rather than as individual witnesses. CCANP Appeal at

73-74. Such panels are provided for in 10 C.F.R. Part 2, Appendix A, V.(d)(4). The use of such panels is within the ambit of procedural powers granted to the Commission by Congress in 5 U.S.C. 556(c). Consequently, no error exists here either.

The intervenor next argues that it was not provided ample time for discovery.<sup>26/</sup> In light of the Commission's directive to hold an expedited hearing -- a directive which CCANP applauded -- the eighteen months of discovery afforded was ample time by any objective standard. Moreover, CCANP makes no showing as to general classes of information it sought or how it was prejudiced. Thus no prejudice is shown. See Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-303, 2 NRC 858, 869 (1975).

In conclusion on its Due Process/procedural rights arguments, CCANP alleges that the "cumulative" effects of the Board's ruling on these matters has denied it the opportunity for a fair hearing. CCANP Appeal at 75. Since there is no error whatsoever as to any of the points intervenor raised in this section, the cumulative effect is therefore nugatory. No reversible error exists.

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<sup>26/</sup> CCANP also notes that the illness of outside counsel was also a factor in its not acquiring adequate discovery. CCANP Appeal at 74. While it does not pursue further this contention specifically, it offers no legal argument as to how that could possibly be viewed as legitimate grounds for reversal of the Board's decision on the discovery motion or the PID in general.

F. Appellant CCANP's Responses to the Board's Findings of Fact Are Without Foundation.

Section VIII of intervenor's brief is styled as "Response to Findings of Fact." CCANP Appeal at 76-89. For the most part these are merely arguments, without any pretense of record support, to show the Licensing Board misjudged the evidence. In the main, the Staff has already responded to any criticism of the findings in CCANP's "Response" in its foregoing arguments. Where viewed as necessary, the Staff submits the following additional comments on these "Responses" to the Findings of Fact (FOF).

FOF 6. The Board below correctly prohibited CCANP from adopting a former intervenor's contentions in light of CCANP not demonstrating under 10 CFR § 2.714(a)(1) that it should be allowed to propose the subject contentions late. Houston Lighting and Power Company (South Texas Project, Units 1 and 2), LBP-82-91, 16 NRC 1364 (1982). See Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 795-98 (1977); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-671, 15 NRC 508, 509 (1982).

FOF 14-35. No error is recited in the findings. CCANP maintains that HL&P should be held to supposed admissions that certain statements concerning soil testing were false. No evidence is cited to show the statements were false. The Staff upon investigation concluded the statements were not false. PID at 114, FOF 24; Crossman, et al., ff. Tr. 10010, at 12; Tr. 10040 (Tapia); Tr. 9862-63 (Shewmaker).

FOF 35. CCANP here argues that HL&P was either aware of the problems at the South Texas project or did not know what was going on at the project. In either event, intervenor maintains that HL&P must bear the price of a license denial. No record support is cited for this proposi-

tion. The Staff has previously dealt with the issues of the "abdication of responsibility" and the "abdication of knowledge". As shown there, CCANP is incorrect as to each matter. See pp. 46-48, supra; see also PID at 155-164, 182-183 (Fdgs. 113-132, 186).

FOF 80. The Licensing Board's conclusions upon the evidence concerning HL&P's involvement in the South Texas Project is set out at PID 182-183 (FOF 186) under the "Board's Conclusions on HL&P's Character and Competence, as Reflected in Issue A." PID at 178 et seq. CCANP's citations to findings on portions of the evidence before the Board do not show any inconsistency in the Board's perception of the evidence as a whole. See also pp. 39-48, supra.

FOF 86 & 87. These findings summarize Staff testimony. The Staff perceives no error in these findings. The tests of when a QA/QC breakdown or other defect of character or competence should lead to a denial of an operating license are discussed, supra, at pp. 19-34. It is noted that HL&P's performance at the South Texas Project led the Staff to issue a Show Cause Order and a Notice of Violation, with the imposition of a substantial civil penalty. See PID at 3.

FOF 89. CCANP by again focusing on only one finding does not present a complete picture of the testimony of HL&P's actions subsequent to the Notice of Violation in April 1980. The basis of the Board's present conclusions on the efficacy of HL&P's steps in regard to prior problems is more fully set out at PID at 197-199, 209-222 (FOF 223, 226, 250-272). This subject was extensively dealt with under "Issue D: Adequacy of Current Construction Programs;" but, CCANP did not submit substantive findings or appeal any matter with regard to that Issue.



FOF 96. Contrary to CCANP's assessments, there is no evidence that there was any intent to shield HL&P's officers from knowledge of construction at South Texas. Cf. PID at 155-164, 186 (FOF 113-132, 186).

FOF 170. Again CCANP fails to cite any evidence contrary to the subject finding. Further, "Issue E: Adequacy of Existing Structures" dealt with possible defects in the South Texas facility. The Licensing Board spent much time considering this matter. See PID at 63-66, 222-245 (FOF 272-316). CCANP filed no appeal on that issue. :

CCANP has not shown any error in the Licensing Board's findings of fact.

IV. THE BOARD CORRECTLY DENIED INTERVENOR'S MOTION TO REOPEN THE PHASE I RECORD

At page 89 of its brief, the intervenor asserts that the Licensing Board erred in the PID in denying CCANP's motion to reopen Phase I of the proceedings. CCANP sought to admit evidence associated with an investigation conducted by the NRC's Office of Inspector and Auditor. See PID at 87. The original motion was filed by CCANP on August 8, 1983 and responses were filed by the Applicants and Staff on August 23 and 29, 1983, respectively.

As stated by the Board, a movant seeking to reopen an evidentiary record has a heavy burden. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-738, 18 NRC 177, at 180 (1983); Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, at 338 (1978); Duke Power Co. (Catawba Nuclear

Station, Units 1 and 2), ALAB-359, 4 NRC 619, at 620 (1976). The movant must show from the material proffered in support of the motion that a different result would have been reached had such material been considered.<sup>27/</sup> Three Mile Island, ALAB-738, supra; Wolf Creek, ALAB-462, supra; Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, at 418 (1974).

The first category of information from the OIA Report for which intervenor sought to reopen the record is identified as the concerns that led OIA to conduct its investigation. See PID at 91. These documents were included as Exhibit 2 to the CCANP motion below. Id. Since the documents contained no factual material, the Board correctly ruled that these documents did not constitute significant and material factual information and denied reopening the record. PID at 92, citing, Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-644, 13 NRC 903 (1981).

The second category of documents CCANP asked to be admitted includes letters from the Department of Justice to HL&P and B&R; wherein, the Department assertedly concluded, inter alia, "criminal violations were committed at STP" and that these acts were "symptomatic of an overall pattern of neglect." According to CCANP, these letters established a level of seriousness as to the QA violations not previously documented. PID at 92. As the Board stated, the PID dealt extensively with the alleged falsification of documents and harassment of QC inspectors; moreover, the

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<sup>27/</sup> Such motions must also be timely filed and involve significant safety or environmental issues as well (Three Mile Island, ALAB-738, supra; Wolf Creek, ALAB-462, supra); however, the Staff does not challenge the motion on either of these two aspects of the tripartite test.

Department of Justice (or OIA) conclusions with respect to these matters could not be given much weight by the Licensing Board in the absence of testimony as to the basis for these conclusions. PID at 93. Most importantly, the conclusions of the Department and the OIA apparently were based on factual events that were already covered in Phase I below and upon which the Licensing Board had based its own conclusions. Id. Consequently, no different result would have been reached and denial of the motion to achieve this information was correct. See Three Mile Island, ALAB-738, supra; Diablo Canyon, ALAB-644, supra; Wolf Creek, ALAB-462, supra.

The third and most important category of information CCANP sought to admit was the OIA report itself. PID at 94. The Board found virtually all of the persons interviewed and identified in that Report had appeared as witnesses in the Phase I proceeding and that all of the I&E reports upon which the OIA report relied were included in the record already. PID at 94-95.

With regard to this OIA report, CCANP identified five items as being "of importance." PID at 95-96. The first is the statement in the report that a concerted effort by investigators would uncover more examples of alteration or falsification of records. Intervenor does not explain how this conclusory statement by OIA would be likely to change the Phase I findings. This item includes no new factual information. It does nothing more than provide the Board with someone else's conclusion on the same information that was presented to the Board.

The second item consists of a similar conclusion on the source of harassment or intimidation of QC inspectors. This item, like the first, also offers no new factual material.

A third item (numbered 4 by CCANP) concerns another OIA conclusion to the effect that the allegations and quality assurance deficiencies resulting in the Order to Show Cause were recurrent problems over an extended period of time. Once again, the evidence underlying this conclusion was dealt with extensively by the Board and, thus, this item must be rejected since it contains no new factual material and does not meet the test for reopening the record.

With respect to the remaining two items, Item 3 referred to interviews with personnel observing QC inspector's morale and performance. The Board found that this had already been dealt with in the testimony and in the decision of the Board. PID at 96. The last item (No. 5) dealt with an altercation between a QC inspector and a project engineer. Contrary to CCANP's claim of "new information", this matter had been the subject of substantial evidence in the record. See PID at 96-97, 269 (FOF 387), citing Warnick, et al., ff. Tr. 8032, at 13-14, 33-34; Tr. 8070-80 (Warnick). See also Staff Exh. 20 at 7 (I&E Rept. 79-04).


As the Board stated in summing up these five items, none constituted new significant factual material information. Moreover, since the information related almost exclusively to B&R's performance as contractor, it did not warrant inclusion in any subsequent phase of the proceeding. See PID at 97-98.

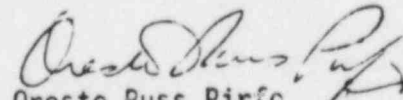
Thus, the Board below considered this offered evidence specifically with respect to the third prong of the test to reopen. It stated that the new proffered material would not affect its ruling on the merits. Id. Such a determination precludes reopening on the basis of the previously cited precedent and is dispositive of CCANP's motion. The Board did not err in denying the motion to reopen Phase I.

V. CONCLUSION

The Licensing Board properly set out the legal standards for the required attributes of character and competence in the nuclear regulatory scheme. It formulated Board Issues A through E with due regard to the Commission's directive in CLI-80-32, 12 NRC 281, on this case. On the basis of the evidence of record and subject to further proceedings, the Licensing Board found that HL&P had the requisite character and competence and resolved correctly each of the CLI-80-32 Issues and the intervenor's Contentions. No Due Process or procedural rights violations occurred during the Board's Phase I proceedings. Consequently, the Staff urges the Appeal Board to affirm the decision of the Licensing Board and dismiss the CCANP appeal.<sup>28/</sup>

Respectfully submitted,

  
Edwin J. Reis  
Assistant Chief Hearing Counsel

  
Oreste Russ Pirfo  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 23rd day of August, 1984

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<sup>28/</sup> In its conclusion, the intervenor requests that the Appeal Board issue an opinion "ab initio" denying a license on the Issue A question standing alone. CCANP Appeal at 89. For the reasons discussed herein, see pp. 29-34, supra, a decision on Issue A only would not comport with the Commission's directive in CLI-80-32. Hence, the Appeal Board should decline to take such a course.

Similarly, with regard to intervenor's alternative request that the Appeal Board remand the case to a different Licensing Board with the direction to "cure" the Due Process violations, the Appeal Board should deny since no such violations have been shown to have occurred below. In the absence of such violations, CCANP has no right to relitigate its cause.

## APPENDIX A

### CLI-80-32 Issue A

If viewed without regard to the remedial steps taken by HL&P, would the record of HL&P's compliance with NRC requirements, including:

- (1) the statements in the FSAR referred to in Section V.A. (1) of the Order to Show Cause;
- (2) the instances of noncompliance set forth in the Notice of Violation and the Order to Show Cause;
- (3) the extent to which HL&P abdicated responsibility for construction of the South Texas Project (STP) to Brown & Root; and
- (4) the extent to which HL&P failed to keep itself knowledgeable about necessary construction activities at STP,

be sufficient to determine that HL&P does not have the necessary managerial competence or character to be granted licenses to operate the STP?

### CLI-80-32 Issue B

Has HL&P taken sufficient remedial steps to provide assurance that it now has the managerial competence and character to operate STP safely?

### CLI-80-32 Issue C

In light of (1) HL&P's planned organization for operation of the STP; and (2) the alleged deficiencies in HL&P's management of construction of the STP (including its past actions or lack of action, revised programs for monitoring the activities of its architect-engineer-constructor and those matters set out in Issues A and B), is there reasonable assurance that HL&P will have the competence and commitment to safely operate the STP?

### CLI-80-32 issue D

In light of HL&P's prior performance in the construction of the STP as reflected, in part, in the Notice of Violation and Order to Show Cause dated April 30, 1980, and HL&P's

responses thereto (filings of May 23, 1980, and July 28, 1980), and actions taken pursuant thereto, do the current [Bechtel/Ebasco] construction QA/QC organizations and practices meet the requirements of 10 C.F.R. Part 50, Appendix B; and is there reasonable assurance that they will be implemented so that construction of STP can be completed in conformance with the construction permits and other applicable requirements?

CLI-80-32 Issue E

Is there reasonable assurance that the structures now in place at the STP (referred to in Sections V.A.(2) and (3) of the Order to Show Cause) are in conformity with the construction permits and the provisions of Commission regulations? : If not, has HL&P taken steps to assure that such structures are repaired or replaced as necessary to meet such requirements?

CLI-80-32 Issue F

Will HL&P's Quality Assurance Program for Operation of the STP meet the requirements of 10 CFR Part 50, Appendix B?

Intervenors' Contention 1

There is no reasonable assurance that the activities authorized by [operating licenses] for the South Texas Nuclear Project can be conducted without endangering the health and safety of the public in that:

1. There has been a surveying error which has resulted in the eastern edge of the Unit 2 Mechanical-Electrical Auxiliary Building being constructed one (1) foot short (in the east-west direction) from its design location. This error violates 10 CFR Part 50, Appendix B, Sections X and XI.
2. There has been a field construction error and as a result, extensive voids exist in the concrete wall enclosing the containment building, in violation of 10 CFR Part 50, Appendix B, Sections IX and X.
3. In violation of Quality Assurance and Quality Control requirements applicable to the South Texas Nuclear Project with regard to document control (10 CFR Part 50, Appendix B, Sections VI and XVII), a field document relating to cadweld inspections has been lost.

4. There are membrane seals in the containment structure which are damaged, indicating a violation of 10 CFR Part 50, Appendix B, Sections X, XV and XVI.

5. There are steel reinforcement bars which are missing from the concrete around the equipment doors in the containment and such bars are missing from the containment structure as well, indicating violations of 10 CFR Part 50, Appendix B, Sections X, XV and XVI.

6. There are cadwelds which have been integrated into parts of the plant structure which are not capable of being verified with regard to compliance with 10 CFR Part 50, Appendix B, in violation of Sections IX and X of Appendix B.

7. Quality Control as per the requirements of 10 CFR Part 50, Appendix B, in particular Sections III and IX, has not been complied with, because:

a. Efforts by quality control inspectors to verify that design changes were executed in accordance with the purposes of the original design were repeatedly and systematically thwarted.

b. There were personnel other than the original designer approving design changes with no first-hand knowledge of the purpose of the original design.

c. There were design changes approved by personnel unqualified in the type of design where the change was made.

d. There were numerous pour cards that were supposed to record the correct execution of concrete pours which were falsified by numerous persons.

e. There has been and continues to be assaults on the Applicant's quality control inspectors, continual threats of bodily harm to those inspectors, firing of inspectors, and other acts constituting a pattern of behavior designed to intimidate the inspectors. As a result of the intimidations, certain inspections were never done because the inspectors decided to play cards over a period of four months rather than risk their safety on the plant grounds.

8. a. As evidenced by the investigative results in Allegation 1 of I&E Report 81-28, Houston Lighting and Power management failed to assure prompt corrective action by Brown and Root in the area of access engineering in violation of Criterion XVI of 10 CFR Part 50, Appendix B.



b. As evidenced by the investigative results in Allegation 1 of I&E Report 81-28, Houston Lighting and Power management does not have a consistent policy on the issuance of stop work orders in violation of Criterion I of 10 CFR Part 50, Appendix B.

c. As evidenced by the investigative results in Allegation 2 of I&E Report 81-28, Houston Lighting and Power management personnel are not committed to respecting the mandates of NRC regulations, especially Criteria I and II of 10 CFR Part 50, Appendix B.

d. As evidenced by the investigative results in Allegation 4 of I&E Report 81-28, HL&P management failed to effectively implement a quality assurance program in violation of Criterion I of 10 CFR Part 50, Appendix B.

As a result of the foregoing, the Commission cannot make the findings required by 10 CFR § 50.57(a)(1) and (2) necessary for issuance of [operating licenses] for the South Texas Nuclear Project.

#### Intervenors' Contention 2

NRC inspection records (Inspection and Enforcement Reports #77-03, 2/77; #77-03, 4/77, and #78-08, 5/78) indicate that South Texas Project construction records have been falsified by employees of Houston Lighting and Power Company and Brown and Root, in violation of 10 C.F.R. Part 50, Appendix B, Sections VI and XVII.

As a result, the Commission cannot make the findings required by 10 C.F.R. §§ 50.57(a)(1) and (2).

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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

DOCKETED  
USNR  
Docket Nos. 50-498  
50-499  
\*84 AGO 28 AIO:38

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S BRIEF IN RESPONSE TO BRIEF OF INTERVENOR CCANP ON APPEAL FROM PARTIAL INITIAL DECISION" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 23rd day of August, 1984:

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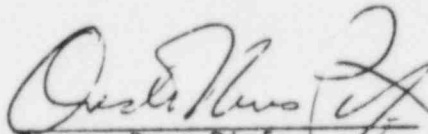
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