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September 27, 1984

Mr. Charles Bechhoefer
Chairman
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, DC 20555

DOCKET NUMBER
PROD & UTIL. FAC. *50-498-0*
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Dear Mr. Bechhoefer:

I write as lead counsel representing Brown & Root, Inc. in the multi-billion dollar lawsuit brought against it by Houston Lighting & Power Company ("HL&P") and the three other co-owners of the South Texas Project, Units 1 and 2 ("STP"). As you may be aware, this lawsuit currently is pending before Judge G. P. Hardy, Jr., in the District Court of Matagorda County, Texas, 130th Judicial District, Case No. 81-H-0686-C.

I have reviewed your Partial Initial Decision ("PID"), dated March 14, 1984, on the Phase I NRC proceedings relating to HL&P's application to operate STP, and your more recent decisions of May 22, 1984, June 11, 1984, July 10, 1984, and September 7, 1984, describing the Licensing Board's intentions with respect to the Phase II litigation of Quadrex Report issues.

Your PID makes a number of negative observations about Brown & Root, even though Brown & Root is not a party and no party has presented Brown & Root's side with regard to any controverted issue. While we do not object to your determinations as to HL&P's character and competence, we are concerned by the negative statements contained in your PID about Brown & Root.

If you reflect upon it, I believe you will recognize that you have no basis acceptable under American administrative law standards, or, indeed, any basis that can be supported with logical integrity to reach conclusions regarding Brown & Root. The evidentiary record is flawed and either incomplete or non-existent, for example, on the following issues:

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- (1) The experience of the project team Brown & Root assembled for the South Texas Project.
- (2) The impact of cost and schedule pressure from the owners on Brown & Root's efforts and on quality assurance at the Project.
- (3) The involvement of HL&P as project manager with complete contractual control over Brown & Root in Brown & Root's efforts to design and engineer the project and to perform quality assurance functions.
- (4) The legitimacy of the Show Cause allegations (which HL&P for tactical reasons chose not to controvert) and the proper allocation of responsibility between HL&P and Brown & Root for problems that did exist on the South Texas Project.
- (5) The possibility that HL&P's decision to remove Brown & Root as architect/engineer was done to provide HL&P a scapegoat to deflect criticism from its co-owners and others.

My purpose in writing is to ask that you refrain from reaching conclusions regarding Brown & Root where you do not have an evidentiary record developed in accordance with the settled standards of American jurisprudence and, indeed, elementary fairness. Negative observations or conclusions are devastating to Brown & Root's standing in the industry and are harmful to its defense of the multi-billion dollar lawsuit brought against it by the South Texas Project owners. There are no claims against Brown & Root to which we cannot give meritorious answers in the lawsuit when given the opportunity to respond.

Let me add additional reasons why the record before you provides no legitimate basis for reaching conclusions vis-a-vis Brown & Root. We now know that at the very time hearings before you were underway, HL&P had, unbeknownst to Brown & Root, decided to remove Brown & Root as architect-engineer and construction manager. It had already taken steps to begin the selection of a replacement. In these circumstances, it is obvious that HL&P and its lawyers had every reason to foist on Brown & Root blame for every problem real or imagined, making Brown & Root a scapegoat. While Brown & Root witnesses were presented during the

hearings, their selection and the content of their direct testimony was controlled by HL&P's attorneys.

Further, the unreliability of the record concerning Brown & Root was compounded by the agreement of the NRC staff and HL&P to present the case to you on a "stipulated" set of facts. As you know, counsel for HL&P stipulated that HL&P would not challenge the factual findings in the 79-19 Investigation Report, Notice of Violation or Show Cause Order. See Transcript at 8023-24.1/

HL&P had made a tactical decision, taken contrary to Brown & Root's advice, not to dispute the allegations in the Notice of Violation and Show Cause Order. The allegations prior to HL&P's decision not to contest them were solely claims. Had HL&P chosen to show cause why they were incorrect in whole, or in part, the NRC could have concluded no penalty was appropriate. After HL&P had already responded by not contesting the allegations, a careful

1/ In pertinent part, HL&P's counsel Mr. Axelrad stated:

As we have previously indicated, it is not the purpose of this panel's testimony to respond to any of the statements of fact set forth in Section A-1 of the Notice of Violation, which are based on I&E Report 79-19. We have not prepared our case with a view to responding to those statements of fact because. . .we do not take issue with the ultimate conclusions on these matters drawn by the NRC Staff in the Notice of Violation.

. . . .

Although some of this panel's [Messrs. Warnick, Singleton & Wilson] testimony overlaps the time period covered by I&E Report No. 79-19, neither it nor the earlier particular testimony of other witnesses, e.g. Mr. Oprea and Dr. Broom, is intended to derogate in any way the admissions contained in our earlier filings, nor to controvert in any way the conclusions drawn by the NRC Staff in the Notice of Violation which is already in evidence in this proceeding. [Tr. 8023-24 (September 14, 1981)].

review of the factual assertions set forth in these documents by Brown & Root and HL&P demonstrated that many of the NRC Staff findings were in material error, contained substantial misunderstandings, and did not present an accurate picture of activities at STP in late 1979 and early 1980. Indeed, HL&P's attorneys expressly represented to the Department of Justice that they consented to the Show Cause charges even though many of them were unsubstantiated. (See Silbert to Lippe letter of June 2, 1981 at page 3, attached as Exhibit A.) The stipulation entered in your hearing deprived the Licensing Board of the opportunity to gain a real insight into Brown & Root's true role at STP.

Let me also briefly allude to the Licensing Board's reliance in the PID on Mr. Goldberg's commissioning of the Quadrex Report, and your intention in Phase II to "assume (as did the Staff) that the various safety deficiencies alluded to in that Report in fact occurred." We respectfully submit that the Board's treatment is without legitimate basis. Because of a protective order in our litigation with HL&P, I am not free to call to your attention evidence developed in discovery. I do want to call to your attention evidence in your own proceeding.

First, Mr. Goldberg's testimony criticizing Brown & Root was given in 1982, after HL&P terminated Brown & Root and commenced its multi-billion dollar lawsuit against Brown & Root. The PID makes no mention of Mr. Goldberg's and HL&P's obvious bias against Brown & Root in 1982.

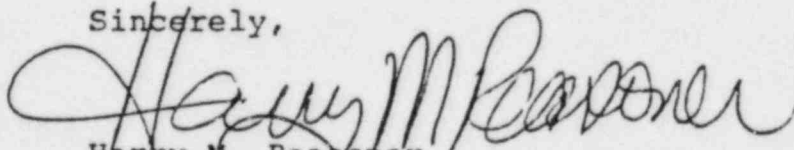
Second, in his September 27, 1983 deposition in your proceeding, Mr. Goldberg questioned the experience, objectivity, and competence of the Quadrex Report reviewers. Mr. Goldberg has given similar testimony undermining the STP Quadrex Review during the Allens Creek NRC construction permit proceeding in April 1982. As you may know, Brown & Root and Bechtel have both prepared extensive analyses of the Quadrex Report findings. They demonstrate the unreliability of the Quadrex findings. Mr. Goldberg in his deposition even acknowledged that he shared some of Brown & Root's "rebuttals" to Quadrex's findings. September 27, 1983 NRC Deposition of Jerome H. Goldberg at Tr. 99-100.

Thus, there is no basis to "assume" that the safety deficiencies alleged in the Quadrex Report "in fact occurred." They did not. As with the allegations in the Show Cause Order and Notice of Violation, at the trial stage

in the pending litigation we intend to rebut the Quadrex allegations and HL&P's involvement in that faulty report.

While considerable harm to Brown & Root's reputation has already been unfairly caused by your PID, we again respectfully urge that your Board, in its future consideration of STF matters, avoid making conclusions regarding Brown & Root. We respectfully submit that the integrity of the NRC's licensing process cannot be assured otherwise.

Sincerely,



Harry M. Reasoner
Attorney for
Brown & Root, Inc.

HMR/ld

cc: Dr. James C. Lamb
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JEROME FINK
OF COUNSEL

June 2, 1981

Lawrence Lippe, Chief
General Litigation and
Legal Advice Section
Criminal Division
Department of Justice
Washington, D.C. 20530

Re: Houston Lighting & Power Company,
South Texas Project

Dear Mr. Lippe:

Immediately upon receipt of the letter dated March 26, 1981, from Karen A. Morrissette of your Section to the President of Houston Lighting & Power Company (HL&P), the Company's General Counsel consulted me with respect to the matters therein. Subsequently, I had the opportunity to meet with you, Julian Greenspun of your Section, and Ms. Morrissette to discuss the letter, an opportunity I certainly appreciated and which I believe was mutually beneficial.

I requested the meeting because of HL&P's serious concern about Ms. Morrissette's letter. The letter alleges that information from the Nuclear Regulatory Commission (NRC) indicates that certain employees at the South Texas Project (STP) have falsified reports in violation of 18 U.S. Code § 1001. The letter further alleges that the "history of deficiencies in the Quality Assurance Program" at STP "also indicates that the actions of these employees are merely symptomatic of an overall pattern of neglect" by HL&P and its contractor, Brown & Root (B&R).

HL&P respectfully but firmly denies as ~~inadequate~~ and unjustified this wholly conclusory and unsupported allegation of an overall pattern of neglect. HL&P's record ~~es-~~
 EC ~~has~~ beyond question that it has been conscientiously

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EXHIBIT A

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Lawrence Lippe, Chief

June 2, 1981

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responsive to matters brought to its attention by NRC Staff and that the Company has taken tangible steps mentioned below to assure the soundness and safety of the STP construction.

First, however, with respect to the specific instance referred to in the first paragraph of Ms. Morrissette's letter I understand from our discussions that the matters involved are covered by NRC Inspection and Enforcement Reports Nos. 80-14 and 80-21. You should be aware that the responsible employees, one a supervisor, were promptly terminated. This is proof of management's determination not to tolerate conduct of this nature. The Justice Department, moreover, declined prosecution. This is not surprising since the alleged false statements involved were not, based on my fifteen years' experience as a federal prosecutor, of the kind for which the Justice Department would authorize criminal prosecution of those who made them.

At our meeting, I was told that because of the safety considerations associated with nuclear facilities, the Justice Department might bring charges where otherwise it would not. Even assuming the soundness of this policy, it is important that the Department be aware of the fact that the quality of the structures and equipment in place at STP have recently been examined by NRC personnel, as well as consultants and independent review committees retained by HL&P and Brown & Root and that -- with the exception of certain welding work which is now being remedied -- all work in place meets applicable requirements and there are no major safety related problems.

In responding to the general charge in the second paragraph of Ms. Morrissette's letter, HL&P's record should be evaluated in light of the extraordinary enforcement system within which the Company and all NRC licensees, must operate. In the case of STP, prior to November, 1979, NRC had conducted fifty-nine (59) inspections at STP; in 1980, NRC conducted thirty-eight (38) inspections; and in 1981 through April 13, seven (7) inspections were conducted. Furthermore, NRC has had a resident reactor inspector stationed at the STP construction site itself to review aspects of the construction program on a daily basis.

When from time to time as a result of their intensive oversight, NRC inspectors found problems at STP, management responded promptly and effectively. Thus, when a number of items of non-compliance were called to the Company's attention

in December, 1979, -- items which led to a Show Cause Order on April 30, 1980, -- HL&P informed NRC almost contemporaneously of its adoption of a nine point action program for specific improvements in the STP quality assurance program. It further described its extensive correction program by letter to NRC in February, 1980.

Although after investigation HL&P could not affirm or deny certain of the alleged items of non-compliance, it decided to treat all violations as "substantiated" and to proceed to a much more far-reaching evaluation of the "root causes" of these non-compliances:

- The Company and its contractor, Brown & Root, undertook a significant review and revision of work procedures to provide clearer and more easily understandable guidance to the crafts and inspection personnel.
- Procedures for tracking non-conforming conditions were changed to provide management with better tools for identifying and correcting any underlying problems.
- Programs to control field design changes were modified to assure consistency with basic design requirements.
- Training and indoctrination programs stressing the importance of quality-related activities were intensified.
- Work procedures were reviewed to incorporate appropriate notice of inspection requirements and proper documentation of completed inspection activities.
- Deficiencies in audit programs were corrected and the audit staff, as well as personnel responsible for inspection activities, was significantly augmented.
- As discussed below, major changes were made to increase the participation and visibility of upper management in QA/QC activities.

The activities were undertaken with the advice and assistance of highly qualified consultants.

A major part of the Company's corrective measures is a more prominent role for upper management in quality-related activities:

- Mr. Jordan, President and Chief Executive Officer of HL&P, met with NRC I&E Staff in Washington immediately after issuance of the NRC's enforcement order to obtain a first-hand impression of the gravity with which the Commission regarded the observed deficiencies. He has since that date participated in numerous meetings at the construction site to review problems and progress at the STP.
- Mr. Jordan assigned the Company's Executive Vice President and most senior engineering-oriented executive, Mr. Oprea, to essentially full-time service on the STP.
- Mr. Oprea is on the site regularly, and directly supervises the work of the corporate quality assurance director, who has been moved to the site.
- The Company has obtained a highly respected person with more than twenty years of experience to serve as Vice President for Nuclear Engineering and Construction. Additional qualified personnel have been hired and others are being recruited.

The effort to assure the viability of the quality program at the STP is a continuing task, but very significant improvements have already been realized. Nearly all of dozens of corrective measures to which the Company has committed itself to the NRC have been accomplished. At our meeting, you stated the interest of your Section in "good faith efforts" by management of a nuclear facility in a quality assurance program. Ms. Morrissette's letter refers to "meaningful efforts." Given the corrective actions outlined in this letter it is difficult to conceive of a more impressive array of good faith and meaningful efforts by management. HL&P management

has worked closely with the NRC to assure that its programs comply with the conditions of its construction permits and NRC regulations. Under these circumstances, any suggestion by the Justice Department that future misconduct by individual employees at STP, particularly employees of its independent contractor or subcontractors, may be attributed to HL&P or its responsible officers would be unfair and unwarranted.

The NRC's continuing interest in these matters is evidenced in a special early hearing now underway on the issuance of the operating licenses for the STP which is basically directed to questions concerning past and current implementation of the quality programs at the STP. HL&P appreciates your statement that you do not view the function of your Section in the Justice Department to be a "regulator." This is, of course, the function and responsibility of the NRC. But HL&P wishes to assure you that if problems of concern to your Section arise, it would welcome the opportunity to review them with you to assure that the Department fully understands the associated circumstances and corrective actions taken to comply with NRC requirements.

Obviously, it is always possible that some individual employees at STP will make mistakes, and may even try to conceal them. Although HL&P is taking every step within its power to encourage employees to act in a responsible and professional manner, the size of the Project is too vast and the number of employees and documents too many for any management, however vigilant, to prevent these occurrences altogether. It is, of course, HL&P's responsibility to make itself aware of such occurrences, to the extent practicable, and to take appropriate corrective actions. The record is clear that HL&P has done this.

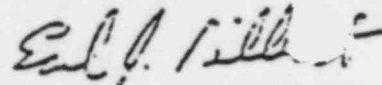
Moreover, as I am certain you are aware, the construction of nuclear power facilities is controversial. There is determined and strenuous opposition on the part of some to the South Texas Project. This has resulted in numerous allegations of violations at STP, some well publicized, which prompt investigation by NRC has not substantiated. The significance of other allegations, even if confirmed as occurring, has been grossly exaggerated. Finally, there are particular sensitivities on the part of all -- regulators and regulated alike -- resulting from the Three Mile Island incident.

All of this makes it especially important that there be adequate communication and cooperation between STP management and the NRC and your Section, where advisable, so that

problems which arise can be placed in proper perspective. I am confident that you will find HL&P most anxious to do what is expected to construct and operate the South Texas Project in compliance with its permits and NRC regulations.

Thank you again for the opportunity to meet with you, Mr. Greenspun, and Ms. Morrissette, and to review this matter with you.

Sincerely,



Earl J. Silbert

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