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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
OPERATING & SERVICE
BRANCH

Before Administrative Judges
Charles Bechhoefer, Chairman
Dr. James C. Lamb
Ernest E. Hill

SERVED NOV 19 1984

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

Docket Nos. STN 50-498 OL
STN 50-499 OL

ASLBP No. 79-421-07 OL

November 16, 1984

FIFTH PREHEARING CONFERENCE ORDER
(Consideration of Issues for Phase II)

On October 16, 1984, the Licensing Board conducted a prehearing conference in order to consider and define the issues to be heard in Phase II of this operating license proceeding.¹ Present at this conference were representatives of the Applicants, CCANP, and the NRC Staff. The State of Texas (an interested State) did not send a representative.² Following are the matters discussed:

¹ The conference was noticed at 49 Fed. Reg. 36037 (Sept. 13, 1984), as amended at 49 Fed. Reg. 37683 (Sept. 25, 1984) and at 49 Fed. Reg. 38722 (October 1, 1984).

² CCANP's representative noted that he had been advised that Texas' representative would not attend the conference, but the CCANP
(Footnote Continued)

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1. As set forth in our Memorandum and Order (Potential Participation by Brown & Root, Inc. in Phase II Proceedings), dated October 17, 1984, we permitted Brown & Root, Inc. (B&R) to have until November 9, 1984 to file with the Licensing Board a petition seeking permission to participate as a party in resolving Phase II issues (Tr. 10729). In that Memorandum and Order, we also provided additional background information on certain questions as to which B&R had earlier expressed an interest, and on jurisdictional and other matters which would attend any intervention request by B&R.

By letter dated November 9, 1984, B&R advised us that it would not seek to intervene for purposes of the Phase II litigation but that it remained concerned about certain aspects of the Phase I hearings. B&R indicated that it was at least exploring the possibility of making a limited appearance statement.

Under NRC rules and practice, written limited appearance statements may be furnished at any time. Oral statements may be submitted at a hearing session or prehearing conference designated by the Licensing Board, within such limits and on such conditions as the Board may fix. See 10 C.F.R. § 2.715(a). If we elect to hear further oral limited appearance statements, we will so advise B&R.

(Footnote Continued)

representative was unaware of Texas' plans for participation in Phase II (Tr. 10726-27).

2. The first Phase II issue to be discussed was the Staff's report (as directed by our March 14, 1984 Partial Initial Decision) on the competence of the new contractors (Rechtel and Ebasco Services). Such report was to analyze the construction QA/QC record of the project under those contractors.

We indicated that, to be meaningful, the report should reflect at least six months of significant safety-related work activities. Both the Applicants and Staff indicated that there has been more than six months of active safety-related construction under the new contractors (Tr. 10731-32).

After discussion with the parties, we determined that the Staff would file its report in affidavit form, that thereafter the other parties would file their own reports or comments on the Staff report, and that we would then determine whether there existed any factual questions upon which an evidentiary hearing would be appropriate. The Staff indicated it could file its report within about 30 days, and we established November 16, 1984 as a target date for the report, with December 21, 1984 as the date for other parties to file their reports or comments (Tr. 10739-40). We indicated that the responses should define explicitly any issues which a party believes require further hearings (Tr. 10741-42). We left open the possibility of responses to the filings of various parties (Tr. 10742-43).

The schedule governing the filing of the Staff report and comments thereon was contingent upon all parties having the underlying documentation--e.g., Staff inspection reports (Tr. 10737). The Staff

indicated it had supplied the relevant reports to CCANP and the State of Texas (Tr. 10733); the Applicants routinely receive such reports. (The Board asked that it be sent the reports beginning in 1982 and added to the mailing list for future reports (Tr. 10733-34).)

By letter dated November 7, 1984, the Staff requested that the filing deadline for its report be extended to December 21, 1984. It advised that the Applicants and CCANP had no objection. By letter dated November 9, 1984, however, the Applicants requested that the response date be set no later than January 21, 1985.

We hereby grant the Staff's request for an extension until December 21, 1984, of the date for filing its report on construction QA/QC under the new contractors. Because of the holiday season, we will permit other parties to file their responses by Friday, February 1, 1985.

3. The next Phase II issue which we discussed with the parties was that of the adequacy of the design of the facility to withstand hurricanes (CCANP Contention 4). In their statement concerning issues appropriate for litigation during Phase II, dated October 5, 1984, the Applicants noted that they intend to file a motion for summary disposition of that contention.

The Board indicated that it would not rule on any such motion without the benefit of the Staff's review of the hurricane issue (Tr. 10744, 10751). That review apparently is only in its preliminary stages; the Staff has not yet sent the Applicants requests for

information pursuant to 10 C.F.R. § 50.54(f) on this subject (Tr. 10746).

The Board specifically pointed to several areas in the FSAR's discussion of hurricanes which, in the Board's view, raised questions about the conservatism of the approach followed. The Board mentioned, inter alia, the methods for ascertaining the sustained wind speed, dealing with reported higher wind speeds, correlating pressures and structural forces of hurricane and tornado wind speeds, ascertaining the probabilities that certain structures would not be impacted by high winds, and for determining the 100-year and 1000-year wind speeds in light of reported wind velocities.

We provided that, after the Applicants file their motion for summary disposition, the Staff would advise us as to when its hurricane review would be complete. We indicated that we would then establish a date for the Staff's (as well as CCANP's) response. We also indicated that we would provide the Staff 5-10 days beyond the filing date for CCANP's response, so that we could have the benefit of the Staff's views on questions raised by CCANP (Tr. 10754). As the Staff pointed out (id.), if it supported the Applicants' motion, CCANP will have an additional opportunity to respond to arguments raised by the Staff. 10 C.F.R. § 2.749.

4. The final Phase II issue which we discussed with the parties involves questions raised by the Quadrex Report. There are essentially two different types of issues raised by the report--the substantive

questions included therein, and the reportability to NPC (including this Board) of the report or portions thereof.

We have previously expressed the view that Quadrex Report issues had to be narrowed prior to any evidentiary hearing thereon, and we directed parties to file statements as to particular matters derived from the Quadrex Report which they wished to litigate or believed should be litigated. Memorandum and Order dated June 22, 1983; Memorandum and Order dated May 22, 1984. In the latter Memorandum and Order, as well as in our Memorandum dated June 11, 1984 and our Memorandum and Order dated July 10, 1984, we also defined to some degree the scope of the Quadrex Report issues that we regarded as appropriate for Phase II consideration. With respect to reportability, we asked the Staff to file a statement of its views on that subject and permitted other parties to file responses.

Timely statements on issues to be litigated were filed by CCANP on October 1, 1984 and by the Applicants on October 5, 1984. The Staff presented its views at the prehearing conference. As for reportability, the Staff filed its statement of views on August 24, 1984, and the Applicants and CCANP filed timely responses on September 28, 1984 and October 1, 1984, respectively. Reportability questions were discussed extensively at the prehearing conference.

We have not yet formulated our conclusions on the reportability questions, including the appropriateness of further evidentiary hearings. We therefore are expressing no views on these

questions at this time. (See item 5, infra, however, for our ruling on certain CCANP discovery requests bearing on the reportability issues.)

With respect to the substantive questions (other than reportability) arising from the Quadrex Report, we conclude that CCANP has not set forth any issues suitable for adjudication. CCANP's October 1, 1984 submission consists of no more than a general index of subjects arising from or bearing on the Quadrex Report which CCANP wishes to litigate. Insofar as they relate to the Quadrex Report, the subjects include such topics as

- I. Pre-Quadrex B&R Design and Engineering Process
- II. Commissioning of Quadrex
- III. Conduct of Study
- IV. Delivery of Study
- V. Notification/Reportability
- VI. Substance Quadrex
- VII. Post Quadrex/Pre NRC Review (August 1981)
- VIII. NRC Review of Quadrex
- IX. NRC Investigations
- X. NRC Testimony
- XI. Quadrex Allens Creek
- XII. Termination of B&R as A-E
- XIII. Phase I Hearings STNP

Each of these topics is subdivided into various sub-topics, of essentially the same character as the topics quoted above.

Except with respect to reportability (Item V, above), CCANP has provided no grounds for demonstrating why it disagrees with either the substance of the Quadrex Report or the commissioning, handling, or review process which was followed. (CCANP's disagreements with the Applicants and/or Staff on reportability questions are extensively set forth in its brief on that subject.) When questioned at the prehearing conference about particular Quadrex Report issues it wished to litigate,

it conceded that its major issue was reportability (Tr. 10756, 10759) and that the remainder of its issues could be denominated as a "global request * * * [to] go into each matter discussed in the Quadrex Report" (Tr. 10758, 10760).

In our view, except with respect to reportability (on which we are not now ruling), CCANP's listing does not satisfactorily define any Quadrex-related issues for purposes of adjudication. In an operating license proceeding such as this one, a party must set forth with particularity contentions concerning particular matters which they wish to litigate; with limited exceptions, we do not normally adjudicate safety issues in an operating license proceeding unless they have been properly raised by a party. 10 C.F.R. § 2.760a. The index-type statement provided by CCANP does not suffice. "[I]n order to introduce a new issue into a proceeding, a party * * * must do more than present what amounts to a check list of items contained in" a particular report. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, NRC 760, 772 (1977). The party must define the effect of the particular matter on (or its "nexus" to) the application under review and why its resolution or lack of resolution has safety (or environmental) significance to the plant in question. Id. at 772-73.

For these reasons, CCANP has failed to define adequately any issue relating to the Quadrex Report (excluding the reportability questions on which we are not now ruling). Our own review of the Quadrex Report and the reviews thereof by Bechtel (for the Applicants) and by the NRC Staff, together with answers to various questions we

posed at the prehearing conference, convinces us that there are no substantive Quadrex issues which we wish to explore sua sponte. Accordingly, we hereby dismiss all Quadrex-related issues except those challenging the reporting to NRC (including this Board) of that report, or information derived therefrom. We defer ruling on the reportability issues at this time.

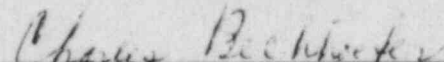
5. In its brief on reportability of the Quadrex Report, CCANP sought additional discovery, directed for the most part at the Staff's procedures and standards for determining whether the Quadrex Report was reportable. Although we are not now ruling on the suitability for litigation of the reportability questions raised by CCANP, we are denying CCANP's discovery requests for two reasons. First, as the Staff pointed out (Tr. 10825-26), CCANP seeks information having no bearing on HL&P's character--the only issue on which the reportability aspects of the Quadrex Report would have a bearing in this operating license proceeding. The requests thus do not fall within the permissible scope of discovery set forth in 10 C.F.R. § 2.740(b)(1). Second, CCANP's requests come too late. To the extent they might have been relevant, they clearly would have been within the scope of discovery permitted by our Memoranda and Orders dated May 22, 1984 and July 10, 1984, which afforded CCANP discovery as to "the circumstances surrounding HL&P's notification of NRC and the parties about [the Quadrex Report]." May 22, 1984 Order at 5. We clarified that the permissible discovery could extend to HL&P's notification to NRC of information in draft reports as well as the final report. July 10, 1984 Order at 7. CCANP

requested no discovery on these questions. In our view, it has forfeited its opportunity to do so. See Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), ALAB-660, 14 NRC 987, 1014-15 (1981).

6. By letter dated October 25, 1984, the Applicants submitted a number of proposed corrections to the transcript of the prehearing conference. By letter dated November 7, 1984, the Staff submitted another proposed correction. We adopt the corrections proposed by the Applicants and Staff, together with a number of additional corrections which we find appropriate. All of these transcript corrections are set forth in the attachment to this Order.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Charles Bechhoefer, Chairman
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland
this 16th day of November, 1984

TRANSCRIPT CORRECTIONS
(Fifth Prehearing Conference)

<u>Page</u>	<u>Line</u>	<u>Change</u>
10728	21	delete "we figure"
10729	10	"of" to "about"
10733	22	"waiting" to "mailing"
10733	23	"Eighth" to "H"
10743	14	"that" to "on which"
10744	20	delete "a"
10746	14	"claim" to "claimed"
10746	16	"boost" to "boosted"
10747	3	insert "to" after first "attendant"
10747	3	insert "to" after second "attendant"
10753	2	"170" to "1.70"
10753	11	"50.54" to "50.54(f)"
10757	16	after first "that", insert "CCANP file a statement of"
10757	17	insert period after "II" and delete "be litigated."
10759	19	"today" to "today's"
10759	23	"That" to "The"
10775	13	delete first "out of the regulations"
10781	12	"forms" to "forums"
10782	8	"Applicant" to "Applicants"
10782	10	"of" to "in"
10787	2	insert "a" after "as"

<u>Page</u>	<u>Line</u>	<u>Change</u>
10792	21	insert comma after "Report", and insert "it" between "think" and "was"
10796	20	delete "like"
10797	17	"50.55(e)(3)" to "50.55(e)"
10797	22	"50.55(e)(3)" to "50.55(e)"
10798	20	"for" to "or"
10798	24	add "job" after "excellent"
10799	21	add "fail to" after second "not"
10803	19	"subserious" to "severity"
10806	5	"Applicant" to "Applicants"
10809	8	"that out" to "do that"
10812	6	"in" to "under"
10814	10	"in" to "as"
10818	5	"essentailly" to "essentially"
10820	16	close quotation after "time."
10820	20	add "and" before "analysis"
10835	23	insert "on" after "reflects"
10837	23	"that. It" to "that or that it"
10846	4	delete "asked"
10848	14	"be" to "me"
10849	5	insert "determine" between "to" and "whether"
10856	3	"promptly" to "properly"
10857	4	delete "ed"
10861	12	add "in the" after "engineering"