

March 25, 1985.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

Docket Nos. 50-498²
50-499^L

NRC STAFF RESPONSE TO CCANP FILING OF
FEBRUARY 25, 1985 COMMENTING ON STAFF AFFIDAVIT

On February 25, 1985, CCANP filed a document providing their comments on the Staff Affidavit of December 21, 1984 addressing construction QA/QC at South Texas since the close of the Phase I record. In addition to their comments on the Staff Affidavit, CCANP filed motions requesting the Licensing Board to require the parties to file prefiled testimony on Issue B in Phase II and to provide for discovery on such testimony. The Staff herein responds to CCANP's comments and motions.

I. BACKGROUND

Issue B in Phase I of this operating license proceeding addressed whether HL&P has taken sufficient remedial steps to provide assurance that it now has the managerial competence and character to operate the South Texas facility safely. In its Partial Initial Decision issued on March 14, 1984 (LBP-84-13, 19 NRC 659), the Board found that although HL&P's competence had greatly improved since the issuance of the show-cause order on April 30, 1980, the record did not allow the Board to determine conclusively that HL&P possessed sufficient managerial

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competence to warrant the issuance of an operating license. 19 NRC at 694-97. This was so in large part because HL&P had replaced its original constructor and architect/engineer (Brown & Root) with two more experienced companies (Bechtel and Ebasco) shortly before the close of the Phase I record. Since the Phase I record could not reflect Bechtel's and Ebasco's performance at the site, the Board required the Staff to issue during Phase II of this proceeding a report concerning the performance of HL&P and its main contractors since the close of the Phase I record. *Id.* at 697. Other parties were extended an invitation to comment on the Staff's report or file reports of their own. *Id.*

In a Memorandum and Order dated May 22, 1984, the Board stated that it did not intend the Staff report to signal "an open-ended extension of Issue B into Phase II." (Order at 8). Instead, the Board indicated that it called for the report to "help ascertain whether the Board's expectations as to improvement in competence were being fulfilled." (*Id.* at 9).

Subsequent to May 22, 1984, the Board has had two additional occasions to comment on the nature of its inquiry into Issue B during Phase II. Both at the Prehearing Conference of October 16, 1984 and in its Fifth Prehearing Conference Order of November 16, 1984, the Board indicated 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. 19741-42). We left open the possibility of responses to the filings of various parties (Tr. 19742-43).

Order of November 16, 1984 at 3 (references to October 16th Prehearing Conference transcript).

The Staff filed its report in the form of an affidavit on December 21, 1984. HL&P filed a responsive affidavit on February 25, 1985. CCANP filed its response on the same day. Because of a misunderstanding concerning the provision to CCANP of various Staff documents, the Board allowed CCANP to make an additional filing on March 11, 1985 to address any information contained in those documents which CCANP believed affected HL&P's competence. Unpublished Memorandum of February 28, 1985 at 2-3. CCANP did not file an additional response until March 13th, at which time CCANP announced in a letter that it would "not have any further filing on the matter of the Staff affidavit or related subjects."

II. CCANP'S MOTIONS

As indicated above, on at least two occasions the Licensing Board indicated that the question of whether further evidentiary hearings would be held on Issue B depended upon the factual issues raised in the Staff's report and responses thereto. In its February 25th response, CCANP has essentially moved the Board to reconsider its position and require an evidentiary hearing without regard to the factual issues indentified by the parties in their responses to the Staff's affidavit. CCANP Response at 2-4. This motion for reconsideration should be summarily rejected. In the first place, it is clearly grossly out of time. The Board

indicated in May of 1984 that its Phase II inquiry into Issue B would be a limited one; the Board clearly indicated at the October 16th Prehearing Conference that the need for further hearings would be dependent on the parties' filings. Tr. 19740-42. The Board's intentions were reaffirmed in its November 16th Order. At no time before February 25th did CCANP object to this method of proceeding. Its objection now is clearly out of time.

Moreover, there is good reason for the Board to adhere to its intended method of proceeding. CCANP has had access to numerous NRC inspection reports and other documentation describing the work of HL&P, Bechtel, and Ebasco at the site since the close of the Phase I record. Indeed, that party has had available to it all the resources it would have had access to in order to file initial contentions challenging quality assurance at the site. If CCANP can not point to factual issues meriting a hearing at this time, there would not seem to be any factual issue in controversy meriting Board review and decision.

CCANP has moved that the parties now file testimony and then engage in discovery. Unless and until the Board determines that there are factual issues meriting a hearing, both requests are premature.

III. CCANP'S COMMENTS ON THE STAFF AFFIDAVIT

In its February 25th filing, CCANP provides certain comments on the Staff Affidavit. CCANP Response at 6-7. CCANP indicates a desire to test the credibility of the affiants and to examine the bases for their opinions. That party also points to various portions of the Affidavit which it claims require exploration at hearing. CCANP does not, however, provide the Board with even a hint of a factual challenge to the

competence of any of HL&P, Bechtel, or Ebasco since the close of the Phase I record. No basis is offered to support any claim related to Issue B. CCANP is in reality asking the Board to engage in a "fishing expedition" at hearing without providing the Board with any defined factual controversies to explore. In light of CCANP's response, the Staff submits that the Board can now resolve Issue B without further evidentiary hearings on the basis of the affidavits submitted by the Staff and Applicant.

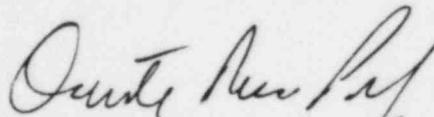
IV. CONCLUSION

For the reasons presented herein, the Staff submits that CCANP's motions for reconsideration of the Board's decision to require the parties to identify factual issues for hearing and for the Board to now require the filing of testimony on Issue B should be denied. The Staff further submits that, no factual issues in controversy having been identified, there is no need for further evidentiary hearings on Issue B and the Board can now resolve the issue on the basis of the filed affidavits.

Respectfully submitted,



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Counsel for NRC Staff



Oreste R. Pirfo
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 25th day of March, 1985

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Docket Nos. 50-4980L
 50-4990L

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CCANP FILING OF FEBRUARY 25, 1985 COMMENTING ON STAFF AFFIDAVIT" 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 25th day of March, 1985.

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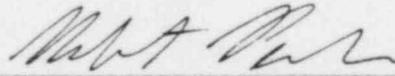
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