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February 25, 1985

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Re: Houston Lighting & Power Co., et al.
South Texas Project, Units 1 and 2
Docket Nos. 50-498 OL, 50-499 OL

Gentlemen:

On Friday, February 22, we received a copy of the February 21 letter from Mr. Sinkin to the Appeal Board. Mr. Sinkin's letter stated that CCANP requested agreement from the other parties to this proceeding for an additional fourteen days until March 8, 1985 in which to file its motion for reconsideration, and that there was no objection from the other parties. Mr. Sinkin's letter of February 22 stated that the February 21 letter should have stated that the NRC Staff took no position on CCANP's request. We

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understand that before the second CCANP letter the Appeal Board granted the unopposed CCANP request.

The background is as follows. On February 20, Jack Newman received a phone call from Mr. Goldstein requesting HL&P agreement to a ten day extension of the time for CCANP to file a Petition for Reconsideration of ALAB-799. Mr. Newman asked when the time for such petitions expired and Mr. Goldstein replied Friday, February 22. On the basis of that representation, I phoned Mr. Goldstein and told him HL&P would not object to a ten day extension.

Applicants would note that they agreed to an extension of 10 days, not 14, but more importantly that they relied on the representation of CCANP that its time for filing would not expire until February 22. Upon review, however, it appears that the last day for filing a Petition for Reconsideration was February 19, and that CCANP's February 21 request for an extension was not timely.

The time for filing a Petition for Reconsideration is "within ten days after the date of the decision." 10 CFR § 2.771(a). Although CCANP apparently seeks to rely on Section 2.710 for an additional five days, the five day extension allowed by the next to last sentence of section 2.710 is not applicable to a Petition for Reconsideration because the time for filing of such a petition runs from "the date of the decision," not "after the service of a notice or other paper." */ Therefor, the time for filing a Petition for Reconsideration had expired before CCANP's request to the Appeal Board, and even before its request to HL&P.

Thus, it appears that the Appeal Board's grant of the CCANP request was premised on

1. an incorrect representation of the position of the NRC staff;

*/ This interpretation of the rules is in accord with Federal courts' interpretation of the parallel to Section 2.710 in the Federal Rules of Civil Procedure, Rule 6(e). See Sonnenblick-Goldman Corp. v. Norwalk, 420 F.2d 858, 860 (3rd Cir. 1970); Flint v. Howard, 464 F.2d 1084, 1087 (1st Cir. 1972); Merrill Lynch, Pierce, Fenner & Smith v. Kurtenbach, 525 F.2d 1179 (8th Cir. 1975).

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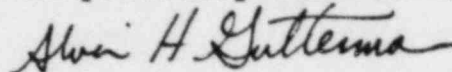
2. an incorrect representation of the period of extension agreed upon by Applicants;

3. agreement of Applicants which was based on an incorrect representation of the deadline for filing;
and

4. a request which was itself filed out of time without any showing of good cause for lateness. */

For all of these reasons Applicants request that the Appeal Board reconsider its grant of CCANP's request and deny it.

Respectfully submitted,



Alvin H. Gutterman

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cc: Certificate of Service

*/ A request for extension of time must be filed before expiration of the period sought to be extended. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-117, 6 AEC 261 (1973); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-144, 6 AEC 628 (1973).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD FEB 27 P1:48

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

OFFICE OF SECRETARY
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BRANCH
Docket Nos. 50-498 OL
50-499 OL

CERTIFICATE OF SERVICE

I hereby certify that copies of the February 25, 1985, letter to the Appeal Board from A. H. Gutterman have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid on this 25th day of February, 1985.

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