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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
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BRANCH

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

**SERVED FEB 28 1985**

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

February 26, 1985

MEMORANDUM AND ORDER  
(Phase II Hearings on Quadrex-Report Issues)

The Quadrex Report is a review of the engineering design activities on the South Texas Project performed by Brown & Root (B&R), the project's former architect-engineer-constructor. It is a 3-volume, 514-page report, prepared by Quadrex Corporation, entitled "Design Review of Brown and Root Engineering Work for the South Texas Project," dated May, 1981. The Report had been initiated by Houston Lighting and Power Co. (HL&P) in January, 1981. This Board was first informed of the Report by letter from the Applicants dated September 28, 1981 (almost 5 months after HL&P received the Report).

Citizens Concerned About Nuclear Power, Inc. (CCANP), an intervenor in this operating license proceeding, is seeking to litigate various issues derived from the Quadrex Report. In our Fifth Prehearing

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Conference Order (Consideration of Issues for Phase II), dated November 16, 1984 (unpublished), we considered, inter alia, whether CCANP had set forth adequate bases warranting a Phase II evidentiary hearing on any Quadrex-Report issues. We observed that there are essentially two types of issues raised by the Quadrex Report -- the substantive questions discussed therein, and the reportability to NRC (including this Board) of the Report or portions thereof. We reached no conclusions in that Order with respect to the reportability questions, but we held that CCANP had not satisfactorily set forth any substantive Quadrex issues for adjudication. Since we did not find a need to raise substantive Quadrex issues sua sponte (see 10 C.F.R. § 2.760a), we dismissed all Quadrex-related issues except those concerning reportability, upon which we deferred ruling. We also denied CCANP the further discovery it had requested on certain Quadrex issues.

In this Memorandum and Order, we consider the reportability questions on which we previously deferred ruling. In addition, we are ruling on CCANP's December 4, 1984 Motion for Reconsideration of the Quadrex-related rulings in our Fifth Prehearing Conference Order. For the reasons which follow, we find certain reportability questions appropriate for adjudication in Phase II but we decline to reconsider our previous rulings with respect to substantive Quadrex issues and Quadrex-related discovery.

I.

A. CCANP first sought to raise formally the reportability issues in its proposed contentions on the Quadrex Report, dated November 21, 1981. CCANP claimed that HL&P's failure, at the time it first received the Quadrex Report, to report more than three of the "hundreds" of Quadrex findings pursuant to 10 C.F.R. § 50.55(e) -- indeed, its failure to submit the entire Report -- demonstrated noncompliance with NRC regulations. CCANP also at that time submitted proposed contentions (numbers 4 and 5) seeking to raise the reportability questions. Specifically, it claimed that various items in the Quadrex Report, and the entire Report, should have been reported pursuant to 10 C.F.R. § 50.55(e)(1)(i), (ii) or (iii).<sup>1</sup>

In our Fourth Prehearing Conference Order, dated December 16, 1981 (unpublished), we ruled that all Quadrex-report issues, including reportability, would be deferred until Phase II of this proceeding. Subsequently, in our Memorandum and Order dated March 25, 1982 (unpublished), we denied CCANP's motion for reconsideration of that ruling insofar as it dealt with the reportability issues. Thereafter, without objection from any party, we adopted a suggestion of the Staff and declined to admit CCANP's proposed contentions on the Quadrex Report, on the ground that, to the extent relevant to this proceeding,

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<sup>1</sup> CCANP cited one finding as reportable under subsection (iii) (Nov. 21, 1981 Motion at 17) but, from the context, we assume CCANP meant to refer to subsection (iv). See also *infra*, p. 8, where we observe that subsections (iii) and (iv) are applicable to construction but not to design deficiencies.

they were already encompassed within existing issues or within the scope of examination of the Quadrex Report outlined in the Fourth Prehearing Conference Order. Memorandum dated June 24, 1982. Reflecting those determinations, our Phase I Partial Initial Decision (PID), dated March 14, 1984, LBP-84-13, 19 NRC 659, subjected our rulings on HL&P's character and competence to the results of our examination of Quadrex-report issues in Phase II. 19 NRC at 668, 686, 691. (In ALAB-799, 21 NRC \_\_\_ (February 6, 1985), the Appeal Board declined to review our holdings on HL&P's character and competence, on grounds of lack of finality reflecting, inter alia, the unresolved Quadrex Report issues.)

On June 25, 1982, the NRC Staff transmitted to the Board and parties copies of I&E Report 82-02, dated June 3, 1982, dealing with an I&E investigation as to whether the Quadrex Report had been properly reported to the Staff. I&E Report 82-02 concluded that HL&P was not required to submit the entire report to the NRC pursuant to 10 C.F.R. § 50.55(e), and that all reportable items in the Report had been submitted to NRC. It further concluded that two items had not been reported on a timely basis (i.e., within 24 hours of discovery) inasmuch as HL&P had been aware of those items prior to its receipt of the final Quadrex Report but had reported them only after receipt of that final Report. Later, in its final review of the Quadrex Report, dated January 7, 1983 (I&E Rept. 82-12, NUREG-0948), the Staff reiterated that conclusion. It found six items to be potential 50.55(e) matters but, on

the basis of a later detailed assessment undertaken by Bechtel Corp. for HL&P, determined that three were not reportable.

Because of our belief that questions concerning the reportability of the Quadrex Report might present legal rather than factual issues, we asked the Staff to provide further analysis of its determination that most items under the Quadrex Report were not reportable. Memorandum and Order, dated June 22, 1983, at 6-7. We permitted other parties to file responses. Specifically, we sought the views of the parties on reportability not only under 10 C.F.R. § 50.55(e) but also under 10 C.F.R. Part 21 and under the Licensing Board notification requirement spelled out in decisions such as Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625-26 (1973) and Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 408-12 (1975).

The Staff filed its brief on the reportability questions on August 24, 1984. Responses were filed by the Applicants on September 28, 1984 and by CCANP on October 1, 1984. We heard oral argument on the reportability questions at the prehearing conference on October 16, 1984 (Tr. 10766-68, 10774-825, 10830-58).

In its brief on reportability, the Staff took the position that, insofar as 10 C.F.R. Part 21 relates to construction permit holders (such as the Applicants here), its coverage is similar, albeit somewhat narrower, than the coverage of 10 C.F.R. § 50.55(e). The Staff also cited certain Staff guidance documents to the effect that items



reported pursuant to § 50.55(e) need not again be reported to satisfy Part 21. See NUREG-0302, Rev. 1 (October, 1977), p. 21.21(b)(1)-15; and I&E Guidance on Section 50.55(e), dated April 1, 1980, at 10. Since CCANP's claims concerning the reportability of the Quadrex Report do not invoke 10 C.F.R. Part 21, and inasmuch as we see no basis for disagreeing with the Staff's conclusion that, insofar as the Quadrex Report is concerned, any reportability under Part 21 would be encompassed by the requirements of 10 C.F.R. § 50.55(e), we will not further discuss any Part 21 requirements.<sup>2</sup> We turn now to reportability under 10 C.F.R. § 50.55(e) and under the McGuire (and related cases) doctrine.

B.1. The reporting requirement of 10 C.F.R. § 50.55(e), with respect to holders of a construction permit for a nuclear power plant, provides for notification of NRC

of each deficiency found in design and construction, which, were it to have remained uncorrected, could have affected adversely the safety of operations of the nuclear power plant at any time throughout the expected lifetime of the plant, and which represents:

(i) A significant breakdown in any portion of the quality assurance program conducted in accordance with the requirements of Appendix B to this part; or

(ii) A significant deficiency in final design as approved and released for construction such that the design does not conform to the criteria and bases stated in the safety analysis report or construction permit; or

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We note that a significant breakdown in a quality assurance program, which CCANP advances as its major basis for reportability of the Quadrex Report, is reportable under 10 C.F.R. § 50.55(e)(1)(i) but not under Part 21. See NUREG-0302, Rev. 1, at p. 21.21(b)(1)-16.

(iii) A significant deficiency in construction of or significant damage to a structure, system, or component which will require extensive evaluation, extensive redesign, or extensive repair to meet the criteria and bases stated in the safety analysis report or construction permit or to otherwise establish the adequacy of the structure, system, or component to perform its intended safety function; or

(iv) A significant deviation from performance specifications which will require extensive evaluation, extensive redesign, or extensive repair to establish the adequacy of a structure, system, or component to meet the criteria and bases stated in the safety analysis report or construction permit or to otherwise establish the adequacy of the structure, system, or component to perform its intended safety function.

10 C.F.R. § 50.55(e)(1). The section further calls for notification "of each reportable deficiency" to be provided to the appropriate NRC regional office (here, Region IV) "within 24 hours," with follow-up written reports to be submitted within 30 days. 10 C.F.R. § 50.55(e)(2) and (3).

To assist construction permit holders in complying with the reporting requirements of 10 C.F.R. § 50.55(e), and I&E inspectors in enforcing those requirements, the NRC Division of Inspection and Enforcement has issued guidelines. The Staff, through its August 24, 1984 brief, has provided copies of the guidelines, dated April 1, 1980. The Applicants indicated their awareness of the guidelines as of the time frame in which the Quadrex Report was issued (Tr. 10777).

In their briefs on reportability, both the Staff and Applicants described a three-element test for reportability: first, a deficiency in either design or construction; second, a potential for the deficiency, if left uncorrected, to affect adversely the safety of plant

operations; and third, the deficiency must fall within one of the four categories of deficiencies spelled out in subsections (e)(1)(i)-(iv) of the regulation. Staff brief at 2-4; Applicants' brief at 2-3. CCANP does not dispute that, to be reportable, an item must satisfy each of the three criteria. Further, all parties seem to agree that, to the extent the Quadrex Report may include deficiencies, they relate to design but not construction, within the meaning of the first of these criteria. That being the case, subsections 50.55(e)(1)(iii) and (iv) also would not be applicable to the Quadrex Report.<sup>3</sup>

2. The Quadrex Report was provided to HL&P on May 7, 1981 (I&E Rept. 82-02, at 3, 5). Three items apparently were reported on May 8, 1981; as we understand it, they were said to fall within the terms of 10 C.F.R. § 50.55(e)(1)(ii) (deficiency in final design "approved and released for construction").<sup>4</sup> The essence of CCANP's claims concerning reportability under 10 C.F.R. § 50.55(e) is that (1) many more Quadrex

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<sup>3</sup> In its November 21, 1981 motion, CCANP suggested that Quadrex item 3.1(g) should have been reported under 10 C.F.R. § 50.55(e)(1)(iii) (which, we believe, was intended to be iv, see supra, n.1). We disagree with CCANP's suggestion, inasmuch as we read subsection (iv), as well as (iii), to be applicable to deficiencies in construction, not design. To the same effect, see CCANP Oct. 1, 1984 brief on reportability, at 6.

<sup>4</sup> Those items apparently were findings 4.2.2.1(a) (Computer Code Verification), 4.4.2.1(a) (HVAC Design Basis) and 4.4.2.1(b) (HVAC System Classification). HL&P reported three other items as "potentially reportable" but later determined them not reportable. NUREG-0948, at 19-20.



Report items -- indeed, the Report in its entirety -- reflected a significant breakdown in a portion of the quality assurance (QA) program and hence were reportable under 10 C.F.R. § 50.55(e)(1)(i); and (2) there has been demonstrated no adequate basis for the Staff's and Applicants' determinations that various items had or had not in fact been released for construction at the time of the Quadrex Report.

In its review of the Quadrex Report in NUREG-0948, at pp. 2, 20, the Staff took the position that the primary reason why the entire Report was not reportable under 10 C.F.R. § 50.55(e) was that the designs in question had not been released for construction, except for the specific items reported. Specifically, the Staff indicated that, "with the exception of the reported items, the design efforts which are the subject of the Quadrex Report had not been released for construction and thus do not meet the criteria of 10 C.F.R. 50.55(e)" (id. at 20, emphasis supplied). Nowhere in NUREG-0948 (or in I&E Report 82-02, the Staff's earlier investigation of the reporting of the Quadrex Report) is any consideration given to whether any Quadrex items (individually or collectively) might have been reportable as a significant breakdown in QA, pursuant to 10 C.F.R. § 50.55(e)(1)(i).

In its brief on reportability, however, the Staff explained why it determined that no Quadrex item, or the Report itself, was reportable as a QA breakdown. It explained that "[w]hile significant quality assurance breakdowns could conceivably be indicated in a design effort review, such breakdowns would not have the potential to adversely affect the safe operation of the plant unless the designs had received

approval to be released for construction" (Staff brief at 4, emphasis supplied). The Staff went on to state that, as a result, it concentrated its reportability review on whether there were significant deficiencies in "final design" (id.). At oral argument, the Staff reiterated essentially the same view (Tr. 10774-76). For their part, the Applicants in their September 28, 1984 brief did not discuss the question of whether Quadrex Report findings reflected one or more significant QA breakdowns; they merely indicated general agreement with the Staff's analysis and conclusions on reportability of the Quadrex Report. Earlier, however, they had indicated that they had considered whether items documented by the Quadrex Report, or portions thereof, reflected a significant QA breakdown, but they gave no details as to how or on what basis they reached a negative conclusion. See Applicants' response to Texas' interrogatories on Quadrex, dated August 26, 1983, at 11 (Interrogatory 9(b)) and 23 (Interrogatory 26)).

For its part, CCANP claims--and we agree--that the Staff used improper standards in evaluating reportability under 10 C.F.R. § 50.55(e)(1)(i). The Staff, while admitting that theoretically there could be a significant QA deficiency irrespective of whether a design had been released for construction, appears to have used the "released for construction" criterion as a threshold for determining the significance of a QA violation. By treating every design not released for construction as not sufficiently significant to be reported, the Staff has effectively eviscerated the requirement of 10 C.F.R.

§ 50.55(e)(1)(i) that a construction permit holder report significant QA breakdowns in design engineering.

The Staff's failure properly to evaluate reportability under 10 C.F.R. § 50.55(e)(1)(i) is equally apparent in its lack of evaluation of the Quadrex Report's so-called "generic" findings. CCANP claims that those 17 "generic" findings represented evidence of a QA breakdown and should have been reported on that basis. The Staff declined to evaluate the reportability of any of the "generic" items on the grounds that those items were based solely on the individual discipline findings, the reportability of which it did evaluate, and hence that the "generic" findings did "not represent new findings" (Staff brief at 9). The Applicants agree with that treatment (or lack of treatment) of the "generic" findings (Applicant's brief at 3-4, n.6).<sup>5</sup>

That approach may be valid for purposes of ascertaining the adequacy of proposed corrective action -- i.e., if each of the discipline findings comprising a generic finding has been satisfactorily considered, and if the particular generic finding is solely the product of identified discipline findings, then the generic finding perforce has also been satisfactorily addressed. But, in our view, at least for reportability purposes under 10 C.F.R. § 50.55(e)(1)(i), a "generic"

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<sup>5</sup> In responding to Texas' interrogatories, the Applicants observed that "[t]he extent of the problems suggested by the generic findings may be assessed by reviewing underlying discipline findings." Applicants' response, dated August 26, 1983, at 22 (Interrogatory 26).

finding may indeed be greater than the sum of its parts; it may document a significant QA breakdown where no component discipline finding rises to that stature. See Staff I&E Guideline, at 5, distinguishing between an inadequate record-keeping system and occasional incomplete or otherwise inadequate records. Moreover, a Bechtel Task Force ascertained that at least one portion of one of the "most serious" generic findings, as well as one of the "serious" findings, were not wholly the product of discipline findings, although it did not determine those findings to be reportable or potentially reportable. See Bechtel Task Force Report, included in Bechtel review, dated August 26, 1982 (Work Package EN-619), at Appendix D, p. A-5 (Finding 3.1(b)); p. A-22 (Finding 3.2(1)), and p. 4-9 of Task Force report, dated March, 1982. Thus, for purposes of ascertaining the existence of a significant QA breakdown for reportability under 10 C.F.R. § 50.55(e)(1)(i), the "generic" findings should have been considered apart from, and in addition to, the discipline findings. The material before us suggests that this method of procedure was not in fact followed by either the Applicants or Staff.

CCANP has set forth several examples of both generic and discipline findings which, it claims, should have been reported as significant QA breakdowns under 10 C.F.R. § 50.55(e)(1)(i). Specifically, in its November 21, 1981 submission (at pp. 15-16), it lists the following generic findings as reportable on that basis:

- 3.1(h) (asserted violation of 10 C.F.R. Part 50, Appendix B, Criterion II)

- 3.1(a) (asserted violation of Part 50, Appendix B, Criterion III)

Although CCANP did not specify the subsection of 10 C.F.R. § 50.55(e)(1) under which it would be reportable, we also read CCANP's allegations with respect to discipline finding 4.3.2.1 (at pp. 14-15) as asserting a QA breakdown, within the meaning of 10 C.F.R. § 50.55(e)(1)(i).

In addition, CCANP has also specified additional particular generic findings as reflecting violations of 10 C.F.R. Part 50, Appendix B -- namely:

- 3.1(b) (asserted violations of Part 50, Appendix B, Criteria I, IV, X, XVIII)
- 3.1(c) (asserted violations of Appendix B, Criterion V, VI)
- 3.1(d) (asserted violations of Appendix B, Criteria I, II)
- 3.1(e) (asserted violation of Appendix B, Criterion V)
- 3.1(f) (asserted violations of Appendix B, Criteria VI, X)
- 3.1(g) (asserted violations of Appendix B, Criteria I, II, V, VII, XVIII)
- 3.1(j) (asserted violations of Appendix B, Criteria I, II, VII, XVIII)

(id. at 39-43, contentions 13-22). If the findings in fact suggested significant violations of Part 50, Appendix B, failure to have reported such findings would potentially be inconsistent with 10 C.F.R. § 50.55(e)(1)(i).

Finally, in its November 21, 1981 proposed contentions (Contention 5) as amplified by its October 1, 1984, brief on reportability (at 2), CCANP asserts that the entire Quadrex Report should have been reported to NRC under 10 C.F.R. § 50.55(e)(1)(i)



inasmuch as the Report documented a significant breakdown in a portion of the STP QA program. Indeed, CCANP claims that the draft Report received by HL&P should have been submitted to NRC within 24 hours after HL&P became aware of the Report's prospective findings (prior to the time the Report was issued in final form) (October 1 brief at 6-7).

3. CCANP also questions the Staff's determinations that various design items included in the Quadrex Report had or had not been released for construction, within the meaning of 10 C.F.R. § 50.55(e)(ii). The Staff in its August 24, 1984 brief indicated that it had been unable to reconstruct the method it had used in developing NUREG-0948 to evaluate this question. The Staff, however, referred to B&R's system for designation of the status of design drawings, in terms of "issued preliminary," "issued for use," "issued for construction," or "issued for review" (Staff brief at 9). According to the Staff, "[t]he use of a drawing was dependent on its status; to be involved in construction, drawings must have been designated as 'issued for construction'". Only items so designated, according to the Staff, would be comprehended by 10 C.F.R. § 50.55(e)(ii).

If we assume that the Staff may have relied on B&R's designations, we must also point out that the Quadrex Report itself includes findings which might undercut any reliance on B&R's designation of its design drawings. For example, Finding 3.1(j) asserts that the B&R design verification process permitted the use of preliminary data up to the point of STP fuel loading, and that, in the structural area, the final verification would likely occur after construction has been

completed. (See also Finding 4.1.2.1(h).) Similarly, Findings 4.2.2.1(b)-(e) identify computer code verification problems. The Bechtel Task Force review of the Quadrex Report, dated March 1982, at B-21 and B-22, refers to one of those findings (4.2.2.1(e)) in terms of improper verification and also as a "documentation" problem, suggesting that improperly verified codes, or improperly marked documents dealing with such codes, may in fact have been utilized for construction. The final Bechtel report (EN-619), dated August 26, 1982, refers to this finding as a "deficiency" and also suggests that certain calculation packages were not acceptably documented. At oral argument, CCANP advanced a similar claim (Tr. 10811). In sum, it appears that documents which may not have been marked as being final or "released for construction" may in fact have been used for construction purposes.

4. As can be seen from the above discussion, CCANP has identified a number of findings of the Quadrex Report, as well as the Report itself, which it claims should have been reported under 10 C.F.R. § 50.55(e)(1)(i) and/or (ii). We believe that CCANP's claims have a substantial basis. In reaching this conclusion, we have not in fact determined that any additional Quadrex Report items, or the Report itself, were in fact reportable. We need not go that far in order to ascertain that CCANP has properly advanced questions concerning the adequacy of HL&P's reporting under 10 C.F.R. § 50.55(e).

In reaching this conclusion, we are placing no weight on the Staff's conclusions on reportability of particular Quadrex findings set forth in its August 24, 1984 filing. The Staff's conclusions appear to

be based on improper factors. For example, as CCANP has pointed out (Tr. 10776-78; see also Tr. 9078-79, 9114), 10 C.F.R. § 50.55(e) contemplates reporting significant information within 24 hours. But the Staff has based many of its conclusions on lack of significance of various findings not on information available when the Report was issued but, rather, on information developed at a much later date (e.g., on the analysis in Bechtel's review (EN-619), released in final form more than 15 months after the submission of the Quadrex Report to HL&P). Moreover, as far as we can tell, the Staff has based some of its significance determinations on a design's asserted lack of release for construction -- a factor, as we have pointed out, which may have no bearing on matters representing a possibly significant QA breakdown. See Staff August 24, 1984 brief, at 9 (item 3) and Enclosure (27 findings designated as non-reportable on that basis alone).

5. For the Quadrex Report questions to be litigable in Phase II, however, CCANP must advance more than that 10 C.F.R. § 50.55(e) has been violated. For operating-license proceedings such as this one are not NRC's primary vehicle for ascertaining the existence of, or penalties for, such violations. In the context of the issues before us, CCANP must additionally demonstrate that a violation, if it occurred, reflects a deficiency in the character or competence of HL&P to complete and/or operate the South Texas facility. As pointed out earlier in this Memorandum and Order, our Phase I PID left open, inter alia, questions concerning HL&P's character and competence (as comprehended particularly by Issues A and B) to the extent that the rulings in the PID might be

affected by HL&P's reporting practices with regard to the Quadrex Report.

In an earlier Order, we also noted that a failure to report under 10 C.F.R. § 50.55(e) would not necessarily reflect a character deficiency where (as here) HL&P maintained, and the NRC Staff agreed, that reporting was not required. We pointed out that, were we to disagree on reportability, the failure to have reported would not reflect adversely on HL&P's character (although HL&P might bear responsibility in other ways for the deficient reporting). Memorandum and Order dated July 10, 1984, at 8 (unreported).

Although a failure to report would not, under those circumstances, indicate a character deficiency per se, it also would not perforce suggest character adequacy. A party would still be free to attempt to demonstrate that any particular failure to report was motivated by character deficiencies. CCANP has advanced certain information which could lead to the conclusion that HL&P's failure to advise NRC pursuant to 10 C.F.R. § 50.55(e) of many findings of the Quadrex Report beyond those actually reported does indeed reflect a character deficiency. Our July 10, 1984 Memorandum and Order (cited above) was intended only to state a general proposition. It did not consider CCANP's claims, first advanced as early as November 21, 1981, that one of HL&P's witnesses had testified as to the particular design engineering matters from the Quadrex Report actually reported but had failed to mention that those items either stemmed from a much broader report or that such a report even existed (Tr. 2404-06 (Goldberg)). In

other words, if CCANP is correct, that witness may not have been telling this Board the "whole truth" about the matters as to which he was testifying. Further, CCANP pointed out that the § 50.55(e) reports themselves failed to mention the Quadrex Report or the circumstance that the reported items were derived from a broader report which included more in unrelated items. CCANP attributed these asserted circumstances to a lack of candor on the part of HL&P. See CCANP November 21, 1981 motion, at pp. 19-21, 25. At oral argument, CCANP reiterated this position (Tr. 10806).

We recognize, of course, that, as the Applicants claim, 10 C.F.R. § 50.55(e) does not provide precise definitions of reportable items and leaves much "to the judgment of the licensees' staff and of the NRC Staff." Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), LBP-78-10, 7 NRC 295, 299 (1978). We also recognize that the NRC Staff was advised of the existence of the Quadrex Report (although not through normal 10 C.F.R. § 50.55(e) channels) at a relatively early date, although we are not certain as to the content or completeness or even the nature of that report. I&E Report 82-02, at 2. Such advice would not affect HL&P's responsibility under 10 C.F.R. § 50.55(e), although it would have a bearing on HL&P's character. Nonetheless, as we stated earlier in our March 25, 1982 Memorandum and Order (at 7-8), it is important to determine whether HL&P has been forthright in its dealings with the Commission, including this Board, and whether the Applicants have satisfied both the letter and the spirit of various applicable reporting requirements. That being so, and given



our reliance in our Phase I Partial Initial Decision on HL&P's openness and candor, we believe that the points raised by CCANP could, if proved, undercut to some degree our earlier findings. We accordingly conclude that there is sufficient uncertainty concerning HL&P's reporting of the Quadrex Report to NRC to warrant a hearing on the effect, if any, on HL&P's character of its reporting with respect to the Quadrex Report.

We note that, at such hearing, we would expect HL&P to address, inter alia, (1) the apparent inconsistency of the Quadrex Report with testimony presented by HL&P during the spring and summer of 1981 concerning the adequacy of B&R's services and HL&P's satisfaction with B&R's services, and (2) the failure of HL&P witnesses to mention the Quadrex Report, or the pendency of a far-reaching review of B&R's design engineering services, in response to questions where such a reference would have at least been appropriate if not specifically mandated. See, e.g., Tr. 1095-96, 1143-52, 1158-59, 2404-06 (Goldberg); Tr. 1269-70, 1294, 1337, 1402-05 (D. Jordon); Tr. 3249-50, 3527-28, 5419-22 (Frazar); Tr. 3469-73, 3486, 3527, 5458-74 (Oprea).

Beyond those character questions which we deem appropriate for litigation in Phase II, CCANP also claims that HL&P's failure to have reported more segments of the Quadrex Report, and the Report itself, as a QA breakdown reflects a lack of competence on the part of HL&P (October 1, 1984 brief at 6-7). From our discussion of the reporting requirements of 10 C.F.R. § 50.55(e)(1)(i), it appears that the Applicants (as well as the Staff) may well have failed to give any serious consideration to whether the findings of the Quadrex Report

indicated a QA breakdown. From the record to date, it appears that what the Applicants and the Staff both have apparently done is looked at each finding narrowly and hence avoided considering the broader implications of individual QA deficiencies. Cf. City of Rochester v. U.S. Postal Service, 541 F.2d 967, 972 (2d Cir. 1976); Kleppe v. Sierra Club, 427 U.S. 390, 409-10 (1976). If that be the case, and if the Applicants' current methodology for evaluating 10 C.F.R. § 50.55(e) deficiencies reflects the methodology used in 1981, that methodology may well represent a defect in competence.

The foregoing competence question may represent the most significant of the Quadrex reportability questions raised by CCANP. HL&P's system for ascertaining 50.55(e) deficiencies, including the level and competence of the persons charged with that responsibility, are matters appropriate for adjudicatory consideration in Phase II. Changes (if any) since 1981 would also be pertinent. In that connection, HL&P's current method for trending QA violations or deficiencies to ascertain their significance, including changes (if any) since 1981, would be a matter on which we would expect the Applicants (as well as other parties who wish to do so) to present testimony.

C. A long line of Appeal Board decisions, extending as far back as 1973, has obligated Applicants to keep licensing or appeal boards informed of newly developing information bearing on issues pending before such boards. See, e.g., Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625-26 (1973); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2),

ALAB-291, 2 NRC 404, 408-12 (1975); Duke Power Co. (Catawba Station, Units 1 and 2), ALAB-355, 4 NRC 397, 406, n.26 (1976); Tennessee Valley Authority (Browns Ferry Plant, Units 1, 2, and 3), ALAB-677, 15 NRC 1387, 1394 (1982); Metropolitan Edison Co. (Three Mile Island Station, Unit 1), ALAB-774, 19 NRC 1350, 1357-60 (1984). The information covered by this obligation is

(i) new information that is relevant and material to the matters being adjudicated; (ii) modification and rescissions of important evidentiary submissions; and (iii) errors [in evidence upon which a board might otherwise rely].

Browns Ferry, supra, 15 NRC at 1394. Moreover, where there is "reasonable doubt" about the materiality of information, "the information should be disclosed for the board to decide its true worth." TMI, supra, 19 NRC at 1358.

In its August 24, 1984 brief on reportability (at 8), the Staff claims that, under the foregoing principles, the Quadrex Report should have been provided to the Board when issued (i.e., during the early hearings in May, 1981). CCANP agrees (October 1, 1984 brief at 26-28). CCANP also cites the obligation of the Applicants' counsel (as distinct from that of the Applicants themselves) to have advised the Board of the Report prior to September 28, 1981 (citing Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-505, 8 NRC 527, 532 (1978)).

For their part, the Applicants deny that the McGuire reporting obligation was violated. They claim that the report was not material or relevant to the matters before this Board, distinguishing between design

QA (the subject of the Report) and construction QA (at issue in these proceedings). Further, they assert that the Applicants advised at least certain Staff members of the Report soon after its issuance and that, as soon as Staff counsel suggested that it be turned over to the Board, they did so. They rely on the statement in TMI, supra, that an applicant should have a reasonable time (there, 2-4 months) to evaluate the materiality of a complex report before turning it over to a board under the McGuire doctrine. Finally, they claim that, even if the Report should have been turned over to the Board under the McGuire doctrine, the failure to do so should be attributed to inadequate advice by HL&P's attorneys and not to a defect in HL&P's character or competence.

We agree with the Staff and CCANP that the Quadrex Report was relevant and material to matters before the Board and, as a matter of law, should have been turned over under the McGuire doctrine shortly after its receipt by HL&P. Construction and design QA are not so disparate as to be considered unrelated subjects; indeed, some of HL&P's Phase I testimony discussed the engineering of the project, including statements by Mr. Goldberg describing the direction of design engineering by HL&P and the reporting of certain design deficiencies to NRC pursuant to 10 C.F.R. § 50.55(e) (Goldberg/Frazar, ff. Tr. 906, at 10-14; Tr. 2404-06). As the Appeal Board has recently observed, topics such as management integrity or quality assurance may not be able to be treated fairly or reasonably by reference to only one part of a plant or to QA in only one area. \*\* \* \* [I]nquiry into quality assurance in one

area \* \* \* may necessarily spill over into other areas of quality assurance performance." Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-797, 21 NRC \_\_\_\_ (Jan. 17, 1985, slip op. at 4, emphasis in original).

Furthermore, HL&P's reliance on TMI is misplaced. Although some period of time may normally be permissible to evaluate the materiality of information, such as outside reports submitted by consultants, such leeway is not available "for reports and the like that could have an immediate effect on matters being pursued at hearing". TMI, supra, 19 NRC at 1359, n.8. The latter situation was present in this proceeding around the time of the Quadrex Report's receipt by HL&P. Under McGuire, et al., it should have been furnished to the Board and parties in May or June of 1981.

As in the case of the reporting under 10 C.F.R. § 50.55(e), however, the mere failure to inform a Board does not, by itself, reflect a deficiency in character or competence. As the Applicants suggest, that failure may reflect the advice which counsel provided or failed to provide to them. On the present record, however, we cannot so hold as a matter of law. We agree with CCANP (Tr. 10849-51) that at least HL&P's knowledge (if any) of the McGuire reporting requirements (as applied to the Quadrex Report) is relevant and material to HL&P's character and competence and, together with a consideration of potential penalties or remedial measures (if any) for the early failure to report, warrants an adjudicatory hearing.



D. The broad issues on which we will hold a Phase II hearing are derived from statements in CCANP's October 1, 1984 brief (at pp. 6-7, 26), as follows (although the Quadrex issues bear on Issues A and B, to facilitate their identification they have been renumbered to follow contentions already introduced into this proceeding):

9. The Applicants' failure to notify the NRC (Region IV) of the Quadrex Report, and of many findings beyond those actually reported, within 24 hours from the time HL&P became aware of the findings or prospective findings of the Report (including drafts), violates 10 C.F.R. § 50.55(e)(2) and reflects adversely on the character and competence of the Applicants and on their ability to manage the construction and operation of a nuclear power plant.

10. The Quadrex Report was relevant and material to issues of character and competence addressed in Phase I of this proceeding and should have been furnished to the Licensing Board and parties shortly after its receipt by HL&P, under obligations imposed by the McGuire line of decisions. Failure to have furnished this Report reflects adversely on the character and competence of the Applicants and on their ability to manage the construction and operation of a nuclear power plant.

We expect that the foregoing issues would be litigated during the same time frame as other issues (if any) regarding HL&P's competence. We will rule on those issues shortly after receiving the final submissions of parties (now scheduled for filing on March 11, 1985). We anticipate convening a prehearing conference, no later than the last week of April, 1985, to discuss the particular matters to be heard. No later than 10 days prior to that conference, we will require CCANP to specify, inter alia, the particular findings of the Quadrex Report which it claims should have been reported pursuant to 10 C.F.R. § 50.55(e)(1)(i) or (ii), together with a basis for its claim;

otherwise, CCANP may challenge reportability under those subsections only of the findings listed in this Memorandum and Order (including the entire Report) or of additional findings (if any) as may be identified by the Board. (We will do so no later than the prehearing conference.) In addition, at the conference, we will expect the Applicants and Staff to advise us of their progress in preparing for the hurricane issue (Contention 4). We currently anticipate the Phase II evidentiary hearings on all matters (including Contention 4) to be held during the period from July 9-August 16, 1985. At the forthcoming prehearing conference, we intend to review with the parties and thereafter set hearing dates for particular Phase II issues.

For reasons set forth in Part II of this Memorandum and Order, we are denying CCANP's request for further discovery on Quadrex matters. But as a predicate for litigation of Contentions 9 and 10, we direct the Applicants to furnish this Board (with copies to all parties that wish to receive them) copies of internal documents or other records (in any form, including drafts), or correspondence or other communications with outside persons (including but not limited to B&R), concerning (1) the reportability or potential reportability to NRC (including this Board) of the Quadrex Report or any particular findings therein; and (2) the potential existence in the Quadrex Report or drafts thereof of information reflecting significant QA violations. Those records should cover the time frame from March 1, 1981 through September 28, 1981. (Records already furnished to any party or the Board need not again be furnished to the prior recipients. For this purpose, records previously

furnished to Texas shall also be considered to have been furnished to CCANP.) If the Applicants claim attorney-client privilege for any record, they should so advise us, setting forth an identification of the particular record (sender, recipient, date, general subject matter).

## II.

Through its December 4, 1984 Motion for Reconsideration of our November 16, 1984 Fifth Prehearing Conference Order, CCANP asks us to reconsider our dismissal of all Quadrex issues other than reportability, as well as our denial of CCANP's request for discovery on certain of the Staff's reportability determinations. By Order dated December 10, 1984, we invited other parties to respond. By filings dated December 31, 1984 and January 14, 1985, the Applicants and Staff, respectively, opposed CCANP's motion.

1. With respect to substantive issues, CCANP claims that we have shifted our position as to what Phase II would encompass. CCANP states that it had submitted Quadrex Report contentions in November, 1981; that it withdrew its contentions on the basis that we would look at all matters relating to the Quadrex Report; but that, thereafter, we dismissed all the substantive Quadrex issues for lack of any contentions. CCANP also disagrees with our conclusions expressed in our Memorandum and Orders of May 22, 1984 and July 10, 1984 (both unpublished) to the effect that further examination of B&R design engineering practices would be unproductive with respect to HL&P's character and cumulative with regard to HL&P's competence.

As pointed out by the Applicants and Staff, we believe that CCANP has mischaracterized or ignored our efforts in the period between the Fourth and Fifth Prehearing Conference Orders to attain a reasonable definition of the Quadrex Report issues. Our expressed willingness to examine "all aspects" of the Quadrex Report indicated that we would entertain appropriate issues derived from any portion of the Report, but it also anticipated that such examination would be tempered by the results of the Bechtel and NRC Staff reviews of the Quadrex Report and that, based on those reviews, Quadrex Report issues could be narrowed. Following receipt of the Bechtel and NRC reviews (and more than a year prior to our Fifth Prehearing Conference), we explicitly advised parties that Quadrex-related issues would have to be further delineated. June 22, 1983 Memorandum and Order, at 5. The same point was reiterated in our May 22, 1984 and July 10, 1984 Memorandum and Orders.

CCANP's October 1, 1984 statement of issues, and its presentation at the Fifth Prehearing Conference, completely failed to narrow the Quadrex-Report issues, as we had earlier advised must be accomplished. CCANP has provided little more than an index to the Report (except in the area of reportability, as to which we are granting CCANP's hearing request). CCANP has made no attempt to eliminate any Quadrex matters, despite the obvious lack of safety significance of some of them.

For example, the Quadrex Report itself denominates many of its findings as impacting (or appearing to impact) "the generation of reliable power" or as "contribut[ing] to project schedule and/or cost

increases" or as "relatively minor items" (Quadrex Report, at 3-1, 4-1 and 4-2). Our June 22, 1983 Memorandum and Order (at 4) explicitly pointed out that much Quadrex Report information had no bearing on safety issues and that it was important, prior to hearing, to designate the portions of the Report impacting the safety issues before us. We specifically directed CCANP, as a predicate to litigation, to

identify particular safety questions which it claims arise from the Quadrex Report and have not, in its opinion, been adequately resolved through the Bechtel or NRC Staff reviews.

Thereafter, in our May 22, 1984 Memorandum and Order, we reiterated that general requirement. CCANP has not complied; as far as we can ascertain, it has provided no basis for litigating any substantive Quadrex issues or findings. As a result, we dismissed all such issues.

We acknowledge that our May 22, 1984 and July 10, 1984 Memorandum and Orders limited the scope of substantive Quadrex issues which we would entertain. Those limitations reflect our belief that, with B&R no longer responsible for design engineering, it would serve little purpose to litigate the matters of B&R design engineering dealt with by the Quadrex Report. As is reflected in the Bechtel and NRC reviews of the Quadrex Report, Bechtel's design engineering methods and systems are significantly different from those employed by B&R. We viewed the adequacy of corrective action (if needed) as important; but, absent any claims by CCANP or other parties to the contrary, we also viewed the Staff's comprehensive review in NUREG-0948 as resolving (or setting the stage for resolution) of all substantive Quadrex issues. Moreover, we have been presented with no information (other than that on



HL&P's reporting practices) which could raise questions as to HL&P's character or competence sufficient to effectuate a significant change in the findings or conclusions we reached in our Phase I Partial Initial Decision. That being so, we viewed litigation of substantive Quadrex issues as likely to be unproductive of information which either could cause us to modify our earlier findings and conclusions or could significantly enhance the acceptability of the project. Absent any additional information which could alter that view, we deny CCANP's request for reconsideration of our earlier ruling on substantive Quadrex issues.

2. With respect to further discovery, we wish to stress that the main subject which CCANP wishes to pursue is the Staff's decisionmaking process with respect to reportability of Quadrex Report findings under 10 C.F.R. § 50.55(e). We stated earlier, and we repeat, that the Staff's procedures are not relevant to HL&P's character and competence. Beyond that, as set forth above, we are placing no reliance in determining reportability of Quadrex Report items on the analysis set forth in the Staff's August 24, 1984 brief. Finally, we repeat that CCANP failed to take advantage of several opportunities for discovery on reportability questions and has hence forfeited its opportunity for further discovery. Accordingly, we are denying CCANP's motion for reconsideration of our discovery ruling. (CCANP will, of course, receive copies of any records which the Applicants provide under our ruling in Part I of this Memorandum and Order, to the extent it has not already received or had access (through Texas) to those records.)

III.

In our Memorandum and Order dated September 16, 1983 (unpublished), we denied CCANP's request to conduct cross-examination of Mr. Jerome H. Goldberg, then HL&P's Vice President Engineering and Construction, at a deposition conducted by the State of Texas. We agreed with CCANP that it had a right to such cross-examination but, because of scheduling considerations, we precluded such cross-examination at that time. We took into account the Applicants' expressed intent to present Mr. Goldberg's testimony at an evidentiary hearing and deferred CCANP's cross-examination of Mr. Goldberg until such hearing.

We expect the Applicants to present the testimony of Mr. Goldberg at the reportability hearings which we have authorized. At that time, Mr. Goldberg may be cross-examined by CCANP not only on matters pertinent to the reporting of the Quadrex Report to NRC but, in addition, on all matters upon which Mr. Goldberg was questioned at Texas' deposition.

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For the foregoing reasons, and taking into account the entire record on the matters discussed herein, it is, this 26th day of February, 1985

ORDERED

1. That CCANP's request for a hearing on the reporting to NRC (including this Board) of the Quadrex Report, or portions thereof, is granted, to the extent indicated in Part I of this Memorandum and Order;

2. That the Applicants are directed to provide records to the Board and parties, as described on p. 23-24 of this Memorandum and Order. These records are to be provided no later than 10 days prior to a prehearing conference to be scheduled during April, 1985 (the exact date and location to be specified in a later Order);

3. That CCANP's motion for reconsideration of portions of our November 16, 1984 Fifth Prehearing Conference Order is denied.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

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Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE