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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of	)	
	)	
HOUSTON LIGHTING AND POWER COMPANY, ET AL.	)	Docket Nos. 50-498 50-499
	)	
(South Texas Project, Units 1 & 2)	)	

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NRC STAFF OPPOSITION TO CCANP MOTION
TO REOPEN PHASE I RECORD

I. Introduction

On April 17, 1985, Intervenor Citizens Concerned About Nuclear Power (CCANP) filed a motion to reopen the Phase I record in this proceeding (hereinafter "Motion") for consideration of certain purported "new evidence" (attached thereto) which demonstrates, in CCANP's view, that Applicant Houston Lighting & Power (HL&P) "had extensive knowledge of Brown & Root's failures long before issuance of the Order to Show Cause" (I&E Rept. 79-19) and that, given the information and knowledge available to HL&P, the termination of Brown & Root, Inc. (B&R) was untimely and indicative of an abdication of responsibility and a deficiency in competence and character of the Applicant.

The Staff hereby opposes the Intervenor's motion to reopen on the grounds that it is untimely, presents no significant safety or

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environmental question, and is unlikely to affect the result reached in the Phase I Partial Initial Decision (PID). 1/

II. Discussion

A. Standards for Reopening the Record

The proponent of a motion to reopen the record carries a heavy burden. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-642, 7 NRC 320, 338 (1978); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620 (1976). A tripartite test for reopening must be met. The motion must be timely, it must address a significant safety or environmental issue, and it must show that a different result might have been reached had the newly proffered material been considered initially. Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-738, 9 NRC 1350, 1355 (1984); Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980). 2/

1/ Jurisdiction to consider this motion lies with the Licensing Board in view of the conclusion of proceedings before the Appeal Board and the Appeal Board's recognition that further proceedings would be conducted before the Licensing Board before an initial decision on HL&P's character and competence would issue. ALAB-799, 21 NRC 360, 369, 385 (1985). See Wisconsin Electric Power, (Point Beach Nuclear Plant, Unit 2), 5 AEC 376, 377, ALAB-86 (1972); (Licensing Board has jurisdiction to reopen on germane matters after remand from Appeal Board); Metropolitan Edison Co. (Three Mile Island, Unit 1) ALAB-699, 16 NRC 1324, 1327-28 (1982), (Licensing Board jurisdiction to reopen hearing on all matters pending before it); see also Three Mile Island, id., ALAB-738, 18 NRC 177, at 189-91 (1983); Philadelphia Electric Co. (Limerick Generating Station), ALAB-726, 17 NRC 755, 757-58 (1983).

2/ The Commission has proposed to codify these standards for reopening a record in its regulations. See 49 Fed.Reg. 50189 (Dec. 27, 1984).

In addition, the criteria for reopening the record govern each issue as to which reopening is sought. The fortuitous circumstance that a proceeding has been or will be reopened on other issues--or, in this case, not yet concluded as to all issues--is not significant. See Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 2), ALAB-486, 8 NRC 9, 22 (1978).

A motion to reopen to present further evidence is timely only when the moving party demonstrates that the new evidence was unavailable to it before the hearing closed. See Northern States Power Co. (Tyrone Energy Park, Unit 1), ALAB-464, 7 NRC 372, 374 n.4 (1978); see also Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523, 526 (1973); cf. Toledo Edison Co., Cleveland

Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Units 1,2, and 3), ALAB-430, 6 NRC 457 (1977). 3/

Even if timely filed, a motion to reopen the record need not be granted when the issues are not of major signficance (Public Service Co. of Oklahoma, (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979)) nor likely to have produced a different result (Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2), CLI-81-5, 13 NRC 361 (1981)).

In the case of CCANP's instant motion to reopen, these tests have not been met. The motion is untimely, it presents little -- if any -- new material relevant to the safety of the plant. It offers facts and

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3/ In Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), CLI-83-19, 17 NRC 1041, 1048 (1983), the Commission dealt with whether the "good cause" requirement of 10 CFR § 2.714(b) for late filed contentions could be satisfied solely on the unavailability of agency documents. The Commission emphasized the obligation of intervenors to uncover information in publicly available materials, and the need for "efficient and expeditious administrative proceedings." The Commission concluded:

> Taken together, these principles require intervenors to diligently uncover and apply all publicly available information to the prompt formulation of contentions. Accordingly, the institutional unavailability of a licensing-related document does not establish good cause for filing a contention late if information was available early enough to provide the basis for the timely filing of that contention.

The effect on the orderly conduct of "efficient and expeditious administrative proceedings" can be more severely affected by the reopening of a record after completion of hearings than by the late filing of contentions. Thus, even more than in the case of late filed contentions, an intervenor cannot premise a motion to reopen the record on his recent discovery of information that was available to him prior to or during a hearing.

"evidence" that indeed had been considered to a large extent already by the Licensing Board and is thus unlikely to lead to a different result. The fact that the proceedings are still open with regard to the Phase II aspects of character and competence (see Motion, at 43) is not significant to the question of reopening Phase I. See Metropolitan Edison, supra, 8 NRC at 22.

B. CCANP's "New Evidence"

1. CCANP Attachment "A".

Intervenor chiefly relies on its attachment "A" in its Motion. (Motion, at 9) This attachment consists of pp. 1355-62 and 1374-80 of a transcript of Mr. Goldberg's testimony before the Public Utility Commission of Texas (PUC). This testimony is pointed to by CCANP as evidence which "directly refutes the accuracy of material information" presented to the Licensing Board by Mr. Oprea of HL&P. CCANP argues that Mr. Oprea "deliberately misled the [Licensing] Board about HL&P's intentions" with regard to the replacement of Brown & Root. While the Motion gives no specific citation to Mr. Oprea's testimony before the Licensing Board, other than June 1981, it is presumed that CCANP is referring to Mr. Oprea's testimony at Tr. 3473 of the Phase I hearings of this Board which is referred to at p. 1378 of the PUC transcript.

This "new evidence" in CCANP "A" is untimely raised. CCANP's representative, Mr. Sinkin, conducted the cross-examination reflected by CCANP "A" on October 1 & 2, 1984, and, thus, was aware of Mr. Goldberg's testimony at that time. Since that time, CCANP has filed several other pleadings in this case with no mention of that "new evidence." These filings include: CCANP's Specification of Particular Matters for

Consideration in Phase II Hearings (filed Oct. 1, 1984); Motion for Reconsideration of Atomic Safety and Licensing Board Order of November 16, 1984 (filed Dec. 4, 1984); CCANP's Comments on Staff Affidavit and Motion for Licensing Board to Require Filing of Prefiled Testimony on Issue B in Phase II (filed Feb. 25, 1984); Motion for Reconsideration of Appeal Board's ALAB-799 (filed March 8, 1985). In addition to these filings, CCANP appeared before the Appeal Board on December 13, 1984, for oral argument on the Phase I PID appeal. In neither the pleadings nor at oral argument did CCANP indicate that it had "new evidence" that could affect the proceeding.

The Intervenor's motion tacitly recognizes that its motion to reopen is untimely. See pp. 39-42. This motion could have been filed at the latest in November 1984, before the above-mentioned pleadings were filed and before appellate argument was held. The recitation of conflicting personal obligations and other duties does not excuse any party from its obligations to timely take actions in Commission proceedings in which it participates. As stated in the Commission's Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454:

> Fairness to all involved in NRC's adjudicatory procedures requires that every participant fulfill the obligations imposed by and in accordance with applicable law and Commission regulations. While a board should endeavor to conduct the proceeding in a manner that takes account of the special circumstances faced by any participant, the fact that a party may have personal or other obligations or possess fewer resources than others to devote to the proceeding does not relieve that party of its hearing obligations.

An even more impcrtant basis for denial of the motion is that there is no germane matter presented in the subject material that was not also

before the Board in the former hearing. CCANP relies principally upon Mr. Goldberg's testimony before the Texas PUC (CCANP "A") on HL&P's consideration and removal of Brown & Root from STP. However, Mr. Goldberg in extensive testimony in the Phase I hearings gave substantially the same history and reasons for HL&P's decision to terminate B&R's design and engineering duties at the South Texas Project. See Tr. ff. 10403, at 5-7; Tr. 10413-17; 10467-69; 10485-87; 10492; 10509-11; 10518-22; 10534-35; 10572-73.

The transcripts of the testimony reveal no inconsistency between the testimony of Mr. Goldberg before this Board and before the Texas PUC, and Intervenor points to none. Indeed the Licensing Board's PID recognizes that, "as early as January, 1981, [Mr. Goldberg] recommended that HL&P study alternatives for either upgrading B&R's performance or carrying on the project with other contractors (Tr. 10518, 10520 (Goldberg))." PID, at 198, FOF 224. To the extent this testimony of Mr. Goldberg was in any way inconsistent with that of Mr. Oprea (at Tr. 3473), it is certainly not a new matter when both Mr. Oprea's testimony and Mr. Goldberg's testimony on the events leading to B&R's replacement were before the Board. See PID, at FOF 224. As Mr. Goldberg testified:

> Judge Hill: Mr. Goldberg, I would like to try to pin down rather precisely the first date that HL&P seriously considered the removal of Brown & Root from this project.
>
> Witness Goldberg: The first date that I have personal knowledge of was June 29, 1981. I would be further able to say that I had suggested to Mr. Jordan as far back as January, 1981 that while HL&P was doing all within its power to work with Brown & Root to correct the problems with the project that I felt a prudent management decision

> that ought to be made is to at least explore the market place to find out if there are any other organizations who are able and willing to come aboard should that decision become necessary.
>
> It takes time to make those evaluations and I instructed that that would be useful avenue to pursue concurrent with our primary priority which was to work with Brown & Root to reach the remedy.
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> I remember making that same suggestion following the meeting in April in Corpus Christi; again, while I had not convinced myself the situation was terminal, it certainly began to occur to me that it would be a useful matter to pursue, to find out what those alternatives were; but it was not to the best of my knowledge until that date in June that the executive management of Houston Light & Power Company directed that I went out into the industry to find out what were the options, so I consider that to be the first point in time when it become a serious thought of the company to actually replacing Brown & Root.

See also Tr. 10467-69, 10492, 10519-22, 10534.

Thus, there is no question that this Board had full evidence of the history of HL&P's removal of Brown & Root.

Consequently, CCANP attachment "A" material is not "new" material that was not formerly placed before the Board and, although perhaps going to an important issue, cannot be considered a new matter of safety or environmental significance. Further, as the substance of Mr. Goldberg's testimony in "CCANP A" is already in the Board's own record, that material could not cause the Board to reach a different result.

2. CCANP Attachments "B" through "PP".

With regard to the memoranda, letters, and other documents CCANP attaches to its motion to reopen as CCANP attachments "B" through "PP", CCANP shows no good cause as to why it did not produce this material earlier. Each of the documents, CCANP "B" through "PP" is dated in the

1973-1979 period. As already held in this proceeding, CCANP had over an 18 month opportunity for discovery that extended through most of 1980. See ALAB-799, 21 NRC at 380; LBP Memorandum and Order August 1, 1980. CCANP can show no good cause why these matters, if CCANP thinks them relevant, were not presented at the hearing extending from May 1981 until June 1982. In Catawba, at 1048, the Commission in the context of determining when good cause existed to file new contentions on newly available documents stated:

> We start with the basic principle that a person who invokes the right to participate in an NRC proceeding also voluntarily accepts the obligations attendant upon such participation. See, e.g., Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-691, 16 NRC 896 (1982). And as a corollary, since intervenors have the option to choose the issues on which they will participate, it is reasonable to expect intervenors to shoulder the same burden carried by any other party to a Commission proceeding. While we are sympathetic with the fact that a party may have personal or other obligations or possess fewer resources than others to devote to a proceeding, this fact does not relieve that party of its hearing obligations Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981) ("Statement of Policy"). Thus, an intervenor in an NRC proceeding must be taken as having accepted the obligation of uncovering information in publicly available documentary material.

Although the documents which CCANP offers now were not published documents, they were all available to CCANP before Phase I began through discovery. CCANP cannot found a motion to reopen on the fact that it did not proffer these documents for consideration at the closed hearing.

CCANP argues that had it known that the Licensing Board was going to rely on the dismissal of Brown & Root as evidence of an improvement in HL&P's character and competency, it would have sought discovery on the timeliness of HL&P's decision to remove B&R. Issue B before the Licensing Board in Phase I of the hearing on the "Adequacy of HL&P's Remedial Actions" clearly entailed the question of whether B&R should be removed and the circumstances surrounding any cause for that removal of B&R. See PID, 19 NRC 725-26, 772-81. CCANP had ample time for discovery on this matter. Further, CCANP's argument (Motion, at 42) that it did not have notice that the issue of whether B&R should be replaced and the causes for that replacement were being litigated cannot be given credence. The hearing in the spring of 1982, was to particularly focus on these matters. See Fourth Prehearing Conference Order, December 16, 1981.

Virtually all aspects of HL&P's activities with regard to the STP were admitted as probative on the questions of HL&P's character and competence. See PID, 19 NRC 725-26, 772-81. The issues in the proceeding always involved what HL&P knew and what it did on the basis of that knowledge. Any of the "new evidence" the motion offers could have been presented in the original context and circumstances surrounding the Phase I hearing. The fact that B&R was not terminated prior to the start of the Phase I hearing does not add weight to Intervenor's argument that it did not realize that the removal of B&R would be relevant to the issues in this proceeding. Intervenor had adequate notice that the possibility, actuality, or timing of B&R's removal was at issue. See e.g. Tr. 3470-73. The documents attached to the Motion were relevant to

the "Adequacy of HL&P's Remedial Actions" (Issue B), as well as to Issue A on "HL&P's Managerial Competence and Character", without an explicit separate "written or admitted contention regarding the replacement of B&R." See Motion, at 42. The absence of these newly offered documents from the record is not a function of the contentions, but a result of Intervenor's own failure to take advantage of discovery and present its case.

The Licensing Board considered the extent of HL&P's awareness of B&R's engineering problems and recognized that "[t]his involvement increased steadily over time from the beginning . . ., with HL&P forcing actions to be taken and becoming more involved in decision-making." PID, FOF 120, 19 NRC 757; see also FOF 125, 19 NRC 758. The crucial consideration is that HL&P did remove B&R. To the extent the timeliness of this removal is questioned by CCANP, the fact remains that HL&P did take the step. Even accepting as true what CCANP's "new evidence" purports to prove, that HL&P should have terminated B&R earlier, the net effect on the PID is of no consequence.

The PID recognized that HL&P probably should have taken remedial steps earlier; nevertheless, it went on to state:

> Finally, to the extent that the failure of HL&P to react sooner may be attributed to a character deficiency, the strong steps taken by HL&P to correct its inexperience . . . in our view counterbalances any character deficiencies which HL&P may have demonstrated. 19 NRC 688.

It is uncontested that the working relationship between B&R and HL&P was not one that ensured proper design and construction of the South Texas Project. The recogniton of that fact led to the removal of B&R.

The Phase I proceeding is replete with evidence as to what HL&P was doing incorrectly. See PID, at FOF 59-62, 69, 79, 80, 83, 96-97, 100-110, 114-119, 122-132, 150-152, 202, 212, 214-215, 19 NRC 740-41, 745-47, 751-60, 764-65, 775, 778. The Licensing Board thus considered the facts presented by this motion's "new evidence." Id. The evidence is cumulative and would not compel a different result had it been considered initially.

Further, an examination of the individual attachments CCANP refers to in its "Examples of Materiality and Significance" for which it seeks to reopen the record (Motion, at 25-39) shows that those attachments and/or the matters reflected in those attachments were known about and enquired into during the course of the now-closed Phase I hearing. 4/ A prime example of this is the reports of the Management Analysis Corporation (MAC) to Applicants. (CCANP attachments "D", "E", "F", "G", "EE", "FF", and "HH"). CCANP uses these reports to support each of its "Examples of Materiality and Significance". (Motion at 25-39). However, the existence of these audits of the work on the South Texas Project were acknowledged and enquired into during the hearing. See e.g. CEU Exh. 10, item 1; Tr. 3467-70, 5104-05, 5112-13, 5118-20.

These MAC Reports, as well as most of the other attachments, deal with HL&P's evaluations of B&R's work. This same subject is dealt with

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4/ It is noted CCANP does not even list over half of its attachments in its examples of materiality and substance of the attachments (Motion at 25-39), No mention is made of attachments "I" through "O", "S" through "U", "W", "Y", "BB", "DD", "EE", "GG", "II" and "KK" through "PP".

in most of the record. See e.g. Tr. 3485-89, 3507, 5092-93, 5343, 5419. Indeed, Mr. Oprea testified that the removal of Brown & Root for poor work was discussed long before the Commission's Show Cause Order. Tr. 3470-72 (Oprea). Similary, HL&P's audits of Brown & Root (CCANP attachments "H", "R", "M", "N", "O", "P") were referred to in testimony and reflected in Findings as not being properly implemented. See FOF 78, 115-16, 19 NRC 745, 756. Others of CCANP's attachments were referred to or are the subjects of testimony in the hearing. Compare e.g. CCANP attachments "AA", "CC", "DD", "II, "JJ" and Tr. FOF 376-88, 19 NRC 820-3, 19 NRC 704-708, 711-13, 801-08; CEU Exh 5; App Exhs 44 and 45; Tr. 4977, 4997, 5074-77, 5081, 5092-93, 5159, 5242.

CCANP's example "a" of the "Examples Materiality and Significance" of the attachments it wishes to introduce in a reopened Phase I hearing, CCANP indicates that it wishes to show that HL&P knew of its inexperience long before the Commission's Show Cause Order but did not take effective action to remedy the problem. (Motion at 26-27). This matter was before the Board in the completed hearing. See e.g. 19 NRC 687-88. At 19 NRC 691-93, the Licensing Board particularly found that HL&P did not have sufficient competence before the Show Cause Order and hired consultants such as MAC to overcome those known defects. See FOF 59-60, 19 NRC 740-41; FOF 99-104, 19 NRC 752-53. No new matter that could change the Board's conclusion is revealed.

CCANP's example "b" of the materiality and significance of the subject attachments, deals with information in MAC reports that shows HL&P management was informed in 1979 that its employee's Frazier, Baker and Turner were not performing properly. (Motion at 27-28). The

competence of these employees was looked to in the completed hearing. 19 NRC 689, 992-93; FOF 101-103, 19 NRC 752. Again the material for which CCANP seeks to reopen the record would not be such as to lead to changed result on the issue of HL&P's character and competence.

CCANP's example "c", of materiality and significance of its attachments for which it wishes to reopen the record, deals with HL&P's purported abdication of responsibility in the period 1977-1979. (Motion at 28-29). Again CCANP seeks to rely on the MAC reports which were testified to in the Phase I hearing. The subject of HL&P's abdication of responsibility was explored by the Board, for example, the Staff testified that HL&P did indeed abdicate too much responsibility before the Show Cause Order. See FOF 115-116, 19 NRC 756; FOF 151-152, 19 NRC 764-65. See also 19 NRC 688-89. The Board concluded in that regard (FOF 184, 19 NRC 771):

> With respect to the question of abdication of authority, the Board finds that in some instance HL&P left too much responsibility in the hands of B&R for certain phases of the STP program. Based on evidence presented in this proceeding, we find that the lapses in project control reported by the Staff were not caused by lack of either technical competence or of a sense of responsibility on the part of HL&P. The principal reasons for those failures were based on lack of experience in management of nuclear construction and poor communications brought about by an excessively long chain of command between field QA/QC personnel and corporate management in Houston (findings 95-98, 106-112). In other instances, the utility exerted clear and forceful control over its contractor, as illustrated by examples cited in Findings 121-125. As set forth in Finding 96, HL&P recognized its lack of experience and the excessively long chain of command and tooks steps to remedy those deficiencies. (See Issue B, infra, for our evaluation of those steps).

Again, no material is shown that could lead to a change in the Board's conclusions that HL&P, in areas, abdicated too much responsibility to Brown & Root. No likely change in material aspects of the Board's conclusion is shown. 5/

CCANP's example "d" of the materiality and significance of its attachments deals with showing that HL&P's upper levels of management abdicated responsibility in not taking action to remove B&R from the project at an earlier time, particularly in view of known QA/QC problems. (Motion at 29-30). The fact that HL&P had a long history of QA/QC problems with Brown & Root was revealed to the Board. For example, Mr. Oprea particularly testified to his urging Brown & Root and Mr. Munisteri to improve QA/QC at the site well before the NRC show cause order in 1979. See e.g. Tr. 5074-89; 5349-52; 5417-22; App. Exh. 44, 45; see also CCANP Exh. 23 for identification. The fact that HL&P contemplated removing B&R at this earlier time was revealed to the Board.

5/ CCANP also references its attachment "Z" to show that HL&P was told in 1977 that Brown & Root had not previously designed a nuclear plant (Motion at 29). Brown & Root's lack of experience and HL&P's long knowledge of it were before the Board. See 19 NRC 761-768. Again no new material is presented by this attachment that was not previously before the Board and it is not shown how this information could change the result of the proceeding. See Northern Indiana Public Service, supra, at 8 AEC 416, 418.

Tr. 3470 (Oprea). 6/ Nothing is shown in this "example" which could lead to a reevaluation of the Board's opinion on Phase I of these proceedings.

CCANP's example "e" of the materiality and significance of the attachments it would seek to introduce in a reopened Phase I proceeding deals with friction between QC inspectors and construction workers at STP in 1977 and 1978. (Motion at 30-32). This subject was extensively dealt with at the hearing and in the Board's prior opinion. See e.g. 19 NRC 687, 710-712, 741, 744, 821-26. CCANP maintains that reports on concrete construction problems in 1977 (CCANP attachment "AA"), a MAC reports (CCANP attachment "D"), and a 1974 HL&P letter to B&R (CCANP attachment "P") show these problems were known earlier. The frictions between QC inspectors and concrete construction workers and between other workers in 1977-1978 was the subject of extensive testimony. See e.g. FOF 376-88, 19 NRC 820-3; 19 NRC 711-12. No new evidence is revealed in CCANP's example "e" that could cause the prior Phase I determination to be changed.

CCANP's example "f" of the materiality and significance of the attachments whose admission it would seek to introduce in a reopened Phase I proceeding deal with HL&P's knowledge of the need for corrective

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6/ CCANP in this example to reopen the record points to its attachments "CC', "P", "Q", "Z", & "F". Document "CC" reflects the same QA problems HL&P was having with B&R in late 1977 early 1978 as shown in App. Exhs. 44 & 45 (Minutes of meetings taking the concerns in attachment "CC" to higher B&R management levels). Attachments "P", "Q", and "Z" deal with problems HL&P was having with B&R earlier in the project and are redundant to other evidence cited above in the record. Attachment "F" is a draft of a MAC report dated October 16, 1978. As we have indicated the report of these matters to HL&P was testified to in the prior hearing.

actions prior to the NRC's show cause order. (Motion at 32-36). The Board itself has found that HL&P had many warnings of B&R's problems in the construction of STP, and should have had knowledge of the need for corrective action. See 19 NRC 687-90; see also 19 NRC 758-60, 771-72. The documents thus listed by CCANP would not cause a change in the Board's conclusion in regard to HL&P's knowledge. 7/

CCANP's example "g" of the materiality and significance of the attachments it would seek to introduce at a reopened hearing purport to deal with when HL&P first had knowledge of the root causes of problems in the construction of STP. (Motion at 36). CCANP points to its attachments "D", "E", "F" and "G", (MAC consultant reports) as the "new" evidence. As we have detailed, these reports and the work of MAC were testified to in the hearing. The Board found, without knowing the details of the reports, that HL&P should have taken earlier action to correct problems at STP. See 19 NRC 687-90. The attachments CCANP would

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7/ CCANP lists its attachments "D", "F", "G", "P", "V", "Z", "AA", "CC" and "JJ" in support of this example. CCANP attachments "D", "F", and "G" were MAC reports which Mr. Oprea testified HL&P was receiving to improve HL&P's management of STP. Tr. 3467-70, 5104-05, 5112-13, 5118-20. The other referenced CCANP attachments are HL&P generated documents dealing with its problems with B&R's work on STP and also are cumulative of the evidence upon which the Board reached its conclusion that HL&P should have known that more efficacious corrective action was needed. See 19 NRC 687-90. CCANP attachments "P", "Z", and "CC" have been previously discussed. CCANP attachment "V", a 1976 HL&P memorandum dealing with "Problems With Brown & Root" in the construction of STP, and CCANP attachment "JJ" is a August 3, 1979, memorandum from J. H. Ferguson of the same subject. These construction problems were testified to at the hearing. CEU Exh. 3, a August 13, 1979, memorandum from J. H. Ferguson, deals with the same matters as CCANP attachment "JJ". See also Tr. 5221-24. No material is presented so as to cause the reopening of the Phase I hearing.

point to in its example "g" as ones to introduce in a reopened hearing, could not cause the ultimate conclusions reached in that hearing to change.

CCANP's example "h" of the materiality and significance of attachments it would seek to introduce at a reopened hearing deal with whether Mr. Goldberg should be given credit for the removal of B&R from STP or whether that credit should be given to others in the HL&P organization. (Motion 36-38). 8/ This, if proved, would not affect the conclusions reached in Phase I of these hearings and thus it is not a predicate to reopening the record. As we have indicated, the Board concluded that HL&P should earlier have taken action at STP. See 19 NRC 687-90. No basis exists to reopen the record for the admission of additional evidence to support that conclusion.

CCANP's example "i" of the materiality and significance of attachments it would seek to introduce into evidence in a reopened hearing deals with whether HL&P's removal of B&R from STP is evidence of HL&P's good character. (Motion at 38-39) No attachments are cited as direct support of this example. Each matter listed in this "example" as a matter CCANP now says it wishes to reopen the record to establish, is already established in the record and the Board's opinion and findings. The record already shows that HL&P first removed B&R as architect/engineer and asked it to stay as constructor. Goldberg, et al. ff. Tr. 10403, at 5-7; 19 NRC 667, 687, 758. The Board recognized that

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8/ These attachments are CCANP "B", "C", "D", "H", "P", "Q", "V", "X", "BB", AND "FF".

B&R's removal was not primarily caused by the quality of the work at STP. FOF 125, 19 NRC 758. The length of time between the Commission's show cause order and the search for a replacement for and removal of Brown & Root is similarily set out in the record and the opinion of the Board. 19 NRC 667; Tr. 10509-11, 10518-22 (Goldberg). In short, all matters which CCANP sets out in this example as a matter it wishes to add to the record are already in the record. Thus CCANP fails to show any "new evidence" that could lead to a change in a material conclusion reached at Phase I of this proceeding.

CCANP fails to show the timeliness of its motion to reopen the Phase I record or that it has any new material evidence that could change the conclusions of the Licensing Board.

C. Discovery

CCANP's subject motion also asks for further discovery on "the precise role played by counsel for Applicants in the replacement process for B&R and in advising or otherwise influencing the decision of Applicants not to inform the Board of the replacement plans or to testify about such plans." (Motion, at 46). It further asks that "an independent special master" be appointed to reduce the work of CCANP or of the Board in order to see where "credibility is questionable and discovery is necessary." (Motion at 47).

First, it is noted that discovery has closed for Phase II of the proceeding. The Board in its Fifth Prehearing Conference Order (Consideration of Issues for Phase II), November 16, 1984, recognized that CCANP had been granted sufficient discovery by its Memoranda and Orders dated May 22, 1984, and July 10, 1984. See also Memorandum and

Order (Phase II Hearings on Quadrex Report Issues), February 26, 1985, at 25-26, 29. To the extent CCANP may be seeking reconsideration of either of those prehearing orders it is far out of time. See 10 C.F.R. §§ 2.751a(d), 2.752(c). 9/

Second, no basis for further discovery has been established. The matter on which CCANP seeks further discovery does not appear germane to any issue in the subject Motion to Reopen. CCANP does not point to any "nexus" between HL&P's counsel's role in the replacement process and the issues raised in the Motion to Reopen concerning the timelinesss of removing Brown & Root. Motion at 2-3. Even as to the purported issue of HL&P's notification of the Board of HL&Ps consideration of the removal of Brown & Root, counsel's role does not seem relevant to whether HL&P had a prior obligation to notify the Board it was considering this action.

Third, there is no basis or authority shown for the appointment of an "independent special master". This Board has the ability to rule upon any discovery disputes that arise. See 10 C.F.R. §§ 2.718, 2.740(f); cf. 10 C.F.R. 2.722. To the extent CCANP seeks the "special master" to aid it in the preparation of its case, the appointment of such a person would be financial aid to an intervenor in a NRC proceeding which is prohibited. See Energy and Water Development Appropriation Act for Fiscal Year 1985, Pub. L. No. 98-360 § 502, 98 Stat. 420; Houston

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9/ CCANP had 18 months for discovery in Phase I of this proceeding and that discovery has long been closed therein. See ALAB-799, 21 NRC at 380.

Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit No. 1), ALAB-625, 13 NRC 13, 14 (1981).

Thus no basis exists for further discovery or the appointment of a special master to assist in discovery.

III. Conclusion

Intervenor CCANP's motion to reopen the Phase I record is untimely, and it is cumulative of evidence already considered by the Licensing Board and, therefore, will not produce a different result from that reached in the Partial Initial Decision. Having failed to meet the tests to reopen a record, the instant motion to reopen the Phase I record should be denied, as should CCANP's request for further discovery.

Respectfully submitted,

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Dated at Bethesda, Maryland
this 9 th day of May, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'85 MAY 10 P12:37

In the Matter of	)	
	)	
HOUSTON LIGHTING AND POWER COMPANY,	)	Docket Nos. 50-498
ET AL.	)	50-499
	)	
(South Texas Project, Units 1 & 2)	)	

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF OPPOSITION TO CCANP MOTION TO REOPEN PHASE I RECORD" 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 9th day of May, 1985.

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