

3/16/81

Exhibit 1

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

INTERVENOR MOTION FOR ALTERATION
OF BOARD ORDER DATED DECEMBER 2, 1980

Citizens Concerned About Nuclear Power (CCANP) and Citizens for Equitable Utilities (CEU), Intervenor in these proceedings submit this Motion for Alteration of Board Order dated December 2, 1980 because:

(1) The Order in question is a product of a prehearing conference conducted by the Board on November 19, 1980. Intervenor contends that actions of the NRC staff, specifically the private NRC/Applicant meeting and subsequent letter of November 14, 1980, confused and misled the Board as to the intent and purpose of the Nuclear Regulatory Commission Memorandum and Order of September 22, 1980.

(2) As a result of this confusion and misdirection, the Board perception of the issues and scheduling of the expedited hearing, as reflected in the transcript of the November prehearing conference and December 2 Order, are not in conformance with the September 22 Memorandum and Order.

(3) The impact of the December 2 Order is to deny Intervenor relief specifically mandated by the Commission.

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I. Introduction

On April 30, 1980, the Director of the NRC's Office of Inspection and Enforcement issued an Order to Show Cause which provided that the licensee or any affected party could request a public hearing.

On May 27, 1980, the CCANP and CEU requested such a public hearing by telegram. On May 28, 1980, CCANP submitted supportive evidence and arguments for the request.

On September 22, 1980, The Nuclear Regulatory Commission issued a Memorandum and Order denying the Intervenor's request for a public hearing but providing for "alternative relief ... In the context of a pending operating license proceeding for these facilities."

On September 24, 1980, the ASLB issued a Memorandum and Order which requested the parties to make suggestions for implementing the September 22, 1980 NRC Memorandum and Order.

Shortly after the ASLB request, Intervenor representatives participated in discussions with Richard Black, Counsel for NRC staff regarding the ASLB request. Applicants also participated in discussions with Mr. Black.

On October 15, 1980, Mr. Black sent a letter to all parties conveying what Mr. Black termed partial agreement on the expanded contentions. (Attachment 1)

On October 22, 1980, Applicants sent a letter to all parties suggesting a formulation of the issues different from Mr. Black's. (Attachment 2)

Satisfied with the Black letter formulation, intervenors submitted no further comments.

On October 27, 1980, Mr. Bernard Bordenick, new Counsel for NRC staff, wrote to the ASLB and all parties that the October 22, 1980 letter from Applicants indicated differing views on the issues justifying a prehearing conference.

On October 30, 1980, the ASLB issued an order setting a prehearing conference for Wednesday, November 19, 1980.

On November 14, 1980, intervenors received by taxicab a letter from Mr. Bordenick setting forth a reformulation of the issues arrived at in a meeting between NRC staff and Applicants. (Attachment 4) Intervenors were neither informed about nor invited to participate in this meeting. The major difference between the Black letter and the Bordenick/Applicant letter is that the second letter included acts by the Applicants since the Order to Show Cause in every issue where the history of non-compliance appeared. The Black letter dealt strictly with the history of non-compliance.

On November 19, 1980, the ASLB convened the prehearing conference. The basis for discussion was the Bordenick/Applicant formulation of November 14 rather than the Black formulation of October 15.

Intervenors' first contention is that the Bordenick/Applicant formulation introduced confusion into the proceedings both by the nature of its contents and its last minute service on the Board and intervenors. The Black formulation avoided

such confusion.

On December 2, 1980, the ASLB issued an Order accepting various issues for consideration at the expedited QA/QC hearing. Included in the accepted issues were:

Issue A. If viewed without regard to the remedial steps taken by HL&P, would the record of HL&P's compliance with NRC requirements, including,

(1) the statements in the FSAR referred to in Section V.A. (10) of the Order to Show Cause;

(2) the instances of non-compliance set forth in the Notice of Violation and the Order to Show Cause;

(3) the extent to which HL&P abdicated responsibility for construction of the South Texas Project (STP) to Brown & Root; and

(4) the extent to which HL&P failed to keep itself knowledgeable about necessary construction activities at STP, be sufficient to determine that HL&P does not have the necessary managerial competence or character to be granted licenses to operate the STP?

Issue B. Has HL&P taken sufficient remedial steps to provide assurance that it now has the managerial competence and character to operate STP safely.

All issues accepted in the Order were to be heard together in the expedited hearing.

II. Discussion

Intervenors contend that the confusion and misdirection

produced by the Bordenick/Applicant letter produced a Board Order on December 2, 1980 which does not conform to the intent and purposes of the Commission's September 22, 1980 Memorandum and Order.

The Commission Memorandum and Order contains the following statements:

(1) "The history of the South Texas Project - at least 12 separate NRC investigations over a 2-1/2 year period, resulting in conferences with the licensee, several prior items of non-compliance, a deviation, five immediate action letters, and now substantiated allegations of harrassment, intimidation and threats directed to QA/QC personnel and apparent false statements in the FSAR - is relevant to the issue of the basic competence and character of Houston."

(2) "Central to that issue [basic competence and character of Houston] are two questions: whether the facts demonstrate that the licensee has abdicated too much responsibility for construction to its contractor, Brown and Root, Inc., and whether the facts demonstrate an unacceptable failure on the part of Houston to keep itself knowledgeable about necessary construction activities."

(3) "Either abdication of responsibility or abdication of knowledge, whether at the construction or operating phase, could form an independent and sufficient basis for revoking a license or denying a license application on grounds of lack of competence (i.e., technical) or character qualification on the

part of the licensee or license applicant." (emphasis added)

(4) [Commissions Gilinsky and Bradford] "The Commission has indicated that abdication of responsibility or abdication of knowledge could form an independent and sufficient basis for denying or revoking a license."

(5) "In large part, decisions about licenses are predictive in nature, and the Commission cannot ignore abdication of responsibility or abdication of knowledge by a license applicant when it is called upon to decide if a license for a nuclear facility should be granted."

(6) "[We expect the Board to look at the broader ramifications of these charges in order to determine whether, if proven, they should result in denial of the operating license application." (emphasis added)

(7) "For this reason, we are ordering the Board to issue an early and separate decision on this aspect of the operating license decision."

On September 23, 1980, the day after the issuance of the NRC Memorandum and Order, Chairman Ahearne, testifying under oath before the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, U. S. House of Representatives, stated:

"Consistent with recent case law at our agency, the Commission declined to order a hearing on the intervenor's quality assurance allegation in the context of the enforcement action.

However, recognizing the seriousness of those allegations and the information uncovered by Mr.

Stello, the Commission unanimously agreed that the intervenors should be permitted to fully litigate those charges in the pending operating license proceeding for the South Texas facility, and that the licensing board in that case should issue an expedited, partial initial decision on those charges.

The Commission indicated that the operating license application might be denied if the facts support an unacceptable abdication of either responsibility for or knowledge about the South Texas project on the part of the Applicant." (Tr. at 7-8)

Intervenors contend that the purpose of the September 22, 1980, NRC Memorandum and Order was to provide intervenors alternative relief to either a public hearing on the Order to Show Cause or a potential petition to revoke the construction permit under 10 C.F.R. 2.206. This relief was to be a separate determination by the ASLB of whether the past non-compliance showed HL&P lacks the character and competence to receive an operating license.

Intervenors contend that statement (1) from the NRC Memorandum and Order clearly points to the history of non-compliance, but not the actions taken by the Applicant subsequent to the Order to Show Cause, as the relevant evidence of competence and character. The Commission makes the entire history of non-compliance the relevant basis for judging character.

Statement (2) from the Memorandum and Order points to two central issues in determining character and competence: abdication of responsibility to the contractor and failure to keep informed about construction.

Statements (3) and (4) say either of the two central issues could form an independent and sufficient basis for license denial by showing lack of character and competence. Intervenor's contend that the words "Independent and sufficient" are an unambiguous statement to the effect that just the non-compliance, with no consideration of future acts could produce a license denial.

Statement (5) uses the term "predictive" to describe the licensing process and points to the two central issues as a basis for predicting future Applicant behavior. The two central issues - failure to exercise oversight and failure to keep informed - refer directly to broader ramifications of the violations found in the Order to Show Cause. These are past failures being used to predict future performance, particularly the question whether Houston Lighting and Power should receive an operating license. The seriousness of these violations might also be used to predict whether the reforms initiated after the Order to Show Cause will be effective, but that is a separate question and prediction. To say the reforms should be part of predicting operating performance is to say that there are three central issues, not two as the Commission stated.

Statement (6) takes the broader ramifications one step further to raise the ultimate issues of character and competence.

Statement (7) is a direct order from the Nuclear Regulatory Commission to the ASLB to issue an early and separate decision on whether the acts of non-compliance and the broader

ramifications of those acts are an independent and sufficient basis for denial of the license.

For purposes of this motion, Statements (3), (4), and (7) are the most important parts of the Commission's Memorandum and Order.

The transcript of the November 19, 1980 prehearing conference reflects that Intervenor representatives spent most of the morning trying to set out the past acts of Applicants as a separate issue from their remedial acts, that is trying to return to the Black formulation rather than the Brundick/Applicant formulations. The separation only reappeared after lunch-time negotiations requested by the Chairman.

Once the issues were separated, Intervenor then argued that Statements (3) and (4) made the past acts an independent and sufficient basis for denial of the operating license. NRC Counsel and Applicants argued that such an independent determination was not possible.

Intervenor contends that the Chairman repeatedly perceived the question as looking first at the acts of non-compliance to see if they would justify revocation or denial, and then if so, whether actions taken subsequent to the Order to Show Cause reversed that conclusion. (Tr. at 247, 267, 285-286, 293, 298) In other words, under the Chairman's formulation if the answer to Issue A was "yes," the Board would then proceed to Issue B.

In the transcript, it appears that one time Dr. Luebke (since removed from the Board) and the Chairman did agree that

a "yes" on Issue A ended the matter (Tr. at 295), but shortly thereafter, the Chairman returns to the "if so" approach (Tr. at 298).

The essential difference is that under Intervenor formulation, "yes" on Issue A would lead directly to denial. A "no" on Issue A would lead to examination of remedial actions. Under the Intervenor formulation, the past acts would be compared to some standard of character and competence would produce a denial and these proceedings would be over.

At the heart of the Chairman's position seems to be a perception that the Commission would insist on comparison with remedial acts (Tr. at 298) and find the Board negligent not to make such a comparison (Tr. at 299). Intervenor, on the other hand, contend that "independent and sufficient" means that independent and sufficient of remedial acts, the Board could find sufficient evidence in the acts of non-compliance and their broader ramifications to deny the operating license.

The third Intervenor argument in November centered on Statement (7) which, Intervenor contend, orders an early and separate decision on the acts of non-compliance and their broader ramifications as an independent and sufficient basis for denial. The Chairman stated his position that there would be no separate decision on Issue A (Tr. at 296-297) but later indicated there might be a decision on Issue A, but only after taking evidence on Issue B. (Tr. at 299)

Mrs. Buchorn protested the Board's decisions and indicated

a desire to appeal. (Tr. at 300). Unfortunately, Mrs. Buchorn's illness prevented her doing so.

Intervenors contend that Statements (3), (4), and (7) should have governed the November proceedings but did not, in good part because the Bordenick/Applicant letter diverted attention from these statements. Intervenors further contend that the rulings of the ASLB deny intervenors relief specifically ordered for the intervenors by the Commission.

As now structured, the expedited hearings will not provide a separate and independent consideration of, and decision on Issue A. While Issue A is drawn separately, Issue B and the Board intention to consider Issue A in the context of Issue B removes the separate and independent relief. Furthermore, the Chairman's statements indicate there will be no separate decision on Issue A, and the hearing itself is scheduled to include the actions taken by Applicant since the Order to Show Cause. The proposed witness list of the Applicant makes very clear that Issue A is not to be treated as a separate and independent item. Applicants' proposed presentations are essentially the same as the Bordenick/Applicant formulation would call for. (Attachment 5)

The Bordenick/Applicant letter and its subsequent influence on the Board Order of December 2 raises another question. In the September 24, 1980 Memorandum and Order of the Board, all parties were invited to suggest a means of implementing instructions of the Commission on September 22. The suggestions

were to be "additional contentions or parts of contentions which should be admitted into this proceeding to reflect the matters encompassed by the show-cause order but not presently contained in Contentions 1 and 2, as well as to comply with the Commission's mandate to consider additional questions." The phrase "additional contentions or parts of contentions ... encompassed by the show-cause order but not presently contained in Contentions 1 and 2" and the "Commission's mandate to consider additional questions" address a consideration of abdication of responsibility, failure to keep informed, and lack of character and competence. Intervenors contend that neither the Commission Memorandum and Order nor the Board's subsequent request envisioned a new contention by Applicants that the Applicant's remedial acts cancelled out any adverse effects the history of non-compliance might have on the application for an operating license.

In essence, the Bordenick/Applicant letter submitted this new contention four days prior to the prehearing conference in November. And the new contention was not submitted in such a way as to be clearly perceived and responded to as a new contention; rather, it was slipped into these proceedings enmeshed in the contentions the Commission, Board, and previous NRC staff clearly intended to consider as new contentions. We object to the new contention itself and certainly object to the surreptitious entry of this contention into these proceedings.

We note in passing that the Applicant's purpose in

entering this new contention is also to challenge the Order to Show Cause itself. A clear example of this intention appears in the March 2, 1981 Applicant letter identifying witnesses. (Attachment 5) On page 7, Applicants state the third panel "will testify on the alleged false statements in the FSAR concerning laboratory testing on backfill material and inspection of backfill placement referred to in the Show Cause Order and will demonstrate that these statements are not 'false'." (emphasis added)

10 C.F.R § 2.202(e) states in part:

"The consent of the licensee to the entry of an order shall constitute a waiver by the licensee of a hearing, findings of fact and conclusions of law, and of all right to seek Commission and judicial review or to contest the validity of the order in any forum." (emphasis added)

This new contention places an additional burden on intervenors to be prepared to comprehensively address the voluminous Applicant response to the Order to Show Cause, a response which is still being developed and implemented, and to defend the Order to Show Cause. Under the Commission Memorandum and Order and the Black formulation, there was not such burden.

For the above and foregoing reasons, intervenors present this Motion and seek the following relief:

A separate hearing only on Issue A followed by a decision on Issue A before proceeding any further.

In the alternative, intervenors request either:

(1) a return to the issues as set forth in the October 15, 1980 letter from Mr. Richard Black, or

(2) a reformulation of the December 2, 1980 issues as follows:

Issue A as written

Issue B eliminated

Issue C eliminate "and B" from parenthetical remark

Issue D eliminate "and HL&P's responses thereto (filings of May 23, 1980 and July 28, 1980), and actions taken pursuant thereto"

Issue E as written

Issue F as written

In the alternative, pursuant to 10 C.F.R. §2.718(l), intervenors hereby request the Board to certify to the Nuclear Regulatory Commission the following questions:

1. In the light of the Nuclear Regulatory Commission Memorandum and Order of September 22, 1980, CLI-80-32, 12 NRC ____, and specifically in light of that part of the Memorandum and Order which states:

"Either abdication of responsibility or abdication of knowledge, whether at the construction or operating phase, could form an independent and sufficient basis for revoking a license or denying a license application on grounds of lack of competence (i.e. technical) or character qualification on the part of the licensee or license applicant,"

did the Commission intend the Atomic Safety and Licensing Board in these proceedings to reach a determination on whether, independent of any remedial acts by Applicants, the acts of non-

compliance and their broader ramifications form a sufficient basis to deny the operating license?

2. In light of that part of the Memorandum and Order which states:

"[W]e are ordering the Board to issue an early and separate decision on this aspect of the operating license proceedings,"

did the Commission intend the Atomic Safety and Licensing Board in these proceedings to:

- a. provide a separate hearing on Issue A as it appears in the Board's Order of December 2, 1980,
- b. require evidence and witnesses to be presented on Issue A as a separate item, and
- c. issue a separate decision on Issue A?

The crux of the difference between the Board and the intervenors is the nature of the relief the Commission intended to give intervenors in the Commission's Memorandum and Order of September 22, 1980. If the Board and intervenors cannot reach a resolution of these differences, the Commission is the logical party to resolve the differences.

Intervenors under that if certification is granted, the Commission be provided with:

- (1) the Board Order of September 24, 1980
- (2) the Black letter of October 15, 1980 (Attachment 1)
- (3) the Applicant letter of October 15, 1980 (Attachment 2)
- (4) the Bordenick letter of October 27, 1980 (Attachment 3)

- (5) the Bordenick letter of November 14, 1980 (Attachment 4)
- (6) the transcript of the November 19, 1980 prehearing conference
- (7) the December 2, 1980 Board Order (Exhibit 2)
- (8) the Applicant witness letter of March 2, 1981 (Attachment 3)
- (9) the transcript of relevant portions of this proceeding.

Respectfully submitted,

/s/ _____
Lanny Sinkin

Citizens Concerned About
Nuclear Power

/s/ _____
Peggy Buchorn

Citizens for Equitable
Utilities

Certificate of Service

We hereby certify that the foregoing document has been served on the following individuals and entities by hand (*) or by deposit in the U.S. Mail, first class, postage prepaid on this 16th day of March, 1981.

Peggy Buchorn
Peggy Buchorn

Lanny Sinkin
Lanny Sinkin

Charles Bechhoefer, Esquire *
Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Jack Newman *
Lowenstein, Newman, Reis,
Axelrad, & Toll
1025 Connecticut Avenue, NW
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Dr. James C. Lamb *
313 Woodhaven Road
Chapel Hill, North Carolina 27514

Docketing and Service Section (7)
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mr. Ernest E. Hill *
Lawrence Livermore Laboratory
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Livermore, Ca. 94550

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Edwin J. Reis *
Office of the Executive
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Atomic Safety and Licensing
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Brian E. Berwick *
Assistant Attorney General for
the State of Texas

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

October 15, 1980

Charles Bechhoefer, Esq., Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In the Matter of
Houston Lighting and Power Company et al.
(South Texas Project, Units 1 and 2)
Docket Nos. 50-498 and 50-499

Dear Mr. Chairman:

This is in response to the Board's Memorandum and Order of September 24, 1980, inviting comments from the parties with respect to what further steps should be taken in this proceeding to implement the instructions of the Commission as set forth in its Memorandum and Order, dated September 22, 1980 (CLI-80-32).

NRC Staff Counsel has made numerous contacts with the parties concerning the Board's Memorandum and Order. Our discussions have centered around the need for further contentions in the QA/QC area, and discovery and hearing schedules. It appears that these discussions have been fruitful and partial agreement has been reached regarding the expansion of admitted contentions and scheduling.

In light of the Applicant's letter to you dated October 6, 1980 (letter from Jack R. Newman to The Honorable Charles Bechhoefer), which indicates that the Applicant intends to present "comprehensive testimony on the concerns of the Board regarding technical qualifications which are reflected in the Board's Memorandum and Order of September 24, 1980," the parties believe that an expansion of the presently admitted contentions is not necessary to comply with the Commission's Memorandum and Order. However, to ensure that all aspects of this important matter are presented and examined before the Licensing Board, the Staff proposes the following hearing procedures:

1. The Applicant will file testimony and make a complete evidentiary presentation on QA/QC matters reflected in (a) Intervenor's Contentions 1 and 2, (b) the Notice of Violation and Order to Show Cause to Houston Lighting and Power (HL&P) dated April 30, 1980, and (c) the Commission's Memorandum and Order, supra, which include the following:
 - A. Does HL&P have the necessary competence and character to operate the South Texas facility?
 - (1) Did HL&P abdicate too much responsibility to Brown and Root for the construction of the South Texas facility?

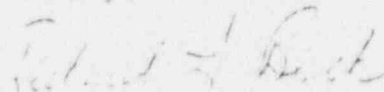
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PDR

- (2) Did HL&P keep itself knowledgeable about necessary construction activities?
- (3) Did HL&P make "material false statements" in its FSAR or other documents pertaining to its operating license application?
- B. Is HL&P's QA/QC program for the operation of South Texas sufficient?
- C. Is there reasonable assurance that the South Texas facility is constructed to an acceptable level of quality and safety?
2. The Applicant has the ultimate burden of proof with respect to the QA/QC issue, and should present its case first.
3. The NRC Staff will file testimony and present witnesses who were responsible for and participated in the investigation conducted by the NRC Region IV Office of Inspection and Enforcement. The NRC Staff will also present testimony on its review of the QA/QC program as reflected in the South Texas FSAR.
4. Intervenor can present testimony and witnesses in support of their contentions and will be free to conduct cross-examination on any issue raised by direct testimony.

The above four items reflect the Staff's understanding of a mutually agreeable way to proceed with the evidentiary hearing on the QA/QC issues based on our preliminary discussions with the parties. However, since it does not represent a complete stipulation of the issues or the procedures, any party should be allowed to comment on this proposal. Insofar as a discovery schedule is concerned, it is the Staff's understanding that all parties do not contemplate a need for extensive further discovery but, in any event, discovery should be completed by December 15, 1980. This discovery schedule would allow a pre-hearing conference in January, 1981 which would establish the date for pre-filed testimony and a schedule for hearing. The Staff contemplates that hearings should commence around late-March, early-April, 1981.

Finally, the Staff wishes to note the appearance of Edwin J. Reis and the withdrawal of Stephen M. Sohinki as NRC Staff Counsel in this proceeding (Notices of Appearance and Withdrawal attached). Mr. Bernard M. Bordenick will be assuming the role as lead attorney and all future telephone communications should be directed to him at 301-492-8648. In the absence of Mr. Bordenick, I can be reached at 301-492-7417.

Sincerely,



Richard L. Black
Counsel for NRC Staff

Attachment... As listed

cc: see Page 3

ATTACHMENT 2

LAW OFFICES

LOWENSTEIN, NEWMAN, REIS, AXELRAD & TOLL

1025 CONNECTICUT AVENUE, N. W.

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202-862-8400

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STEVEN R. FRANTZ
FREDERIC S. GRAY
DOUGLAS G. GREEN
ALVIN H. GUTTERMAN
DAVID G. POWELL
DAVID B. RASKIN
NOM. TENN.
ADM. TENN.

October 22, 1980

Charles Bechhoefer, Esquire
Chairman
Atomic Safety and Licensing
Board
United States Nuclear
Regulatory Commission
Washington, D. C. 20555

Re: In the Matter of Houston Lighting & Power
Company (South Texas Project, Units 1 and 2)
Docket Nos. STN-4980L and STN-4990L)

Dear Mr. Chairman:

Applicants are in receipt of the NRC Staff's letter of October 15, 1980, regarding further steps to be taken in this proceeding, and we agree with the Staff's proposed order of presentation.

As indicated in our letter of October 6, 1980, Applicants intend to present comprehensive testimony on the concerns regarding the technical competence and character of Applicant, Houston Lighting & Power Company (HL&P), as reflected in the Board's Memorandum and Order of September 24, 1980. Applicants are in the process of developing their presentation so that they can be prepared to go to hearing at an early date, as the Board has suggested. In preparing our presentation we have reviewed the factual issues that have been raised in this case, and relevant decisions of Appeal Boards and Licensing Boards. Our review suggests that further clarification of the issues suggested in the Staff's October 15, 1980, letter is necessary.

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Charles Bechhoefer, Esquire
October 22, 1980
Page Three

Specifically,

(1) Do the asserted deficiencies in the QA/QC program for the construction of the STP, as reflected in the aforementioned documents, require an adverse finding on the issue of HL&P's technical qualifications to operate the STP? 2/

(2) Do the HL&P and Brown & Root (B&R) construction quality assurance organizations and practices, including the changes therein as reflected in the aforementioned documents, constitute substantial evidence of HL&P's capability and commitment to safe operation of the STP? 3/

(3) Do HL&P's organization and procedures for monitoring the construction of STP, including the activities of its architect-engineer-constructor, provide reasonable assurance that HL&P can fulfill its responsibility under its license and NRC regulations

2/ See Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), LBP-77-68, 6 NRC 1127, 1150 (1977), affirmed ALAB-491, 8 NRC 245 (1973); Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2) ALAB-143, 6 AEC 623, 626 (1973); Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), LBP-73-36, 6 AEC 929, 938 (1973), affirmed in pertinent part ALAB-248, 8 AEC 957, 974 n. 24 (1974); Duquesne Light Co. (Beaver Valley Power Station, Unit 1) ALAB-408, 5 NRC 1383, 1387 (1977).

3/ See Beaver Valley, supra; Commonwealth Edison Co. (Zion Station, Units 1 and 2) ALAB-226, 8 AEC 381, 400-401 (1974); North Anna, supra.

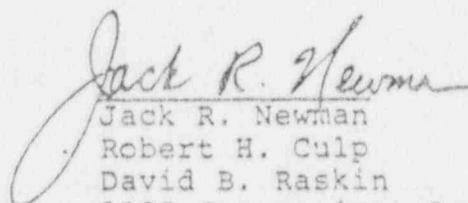
Charles Bechhoefer, Esquire
October 22, 1980
Page Five

Applicants believe that the clarifications suggested above are essential in order that they be able to proceed promptly to prepare and present their case first as suggested by the Staff. If the issues are clarified in the manner suggested above, Applicants are prepared to proceed without further discovery. If the issues are not so clarified, Applicants could require further discovery. For example, if the alleged "false statements" are other than those identified in issue B, above, additional discovery may be necessary in order to assure that the scope of Applicants' direct testimony is adequate.

Since it is possible that either the NRC Staff or the intervenors may have differing views as to precisely how the issues should be clarified, Applicants urge the Board to schedule an early prehearing conference at which the Board could finalize both the statement of the issues and the schedule. In the interim, we can assure the Board that we are generally proceeding with preparation of our presentation so that we will be able to go to hearing at the earliest possible date.

Finally, we wish to inform the Board that, depending on how the issues are framed, Applicants may wish to file motions for summary disposition with respect to certain of the issues. Accordingly, we respectfully request that in establishing the schedule for this proceeding the Board include specific provisions for the filing of such motions and responses thereto.

Respectfully,



Jack R. Newman
Robert H. Culp
David B. Raskin
1025 Connecticut Ave., NW
Washington, D. C.

Finis Cowan
Thomas Hudson
Melbert D. Schwarz
3000 One Shell Plaza
Houston, Texas 77002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

IN THE MATTER OF	\$	
	\$	
HOUSTON LIGHTING & POWER	\$	DOCKET NOS. STN-4980L
COMPANY, ET AL.	\$	STN-4990L
	\$	
(South Texas Project	\$	
Units 1 and 2)	\$	

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached letter from Jack R. Newman to Charles Bechhoefer in the above-captioned proceeding, were served on the following by deposit in the United States mail, postage prepaid, or by hand delivery this 22nd of October, 1980:

Dr. James C. Lamb, III
313 Woodhaven Road
Chapel Hill, North Carolina 27514

Dr. Emmeth A. Luebke
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Bernard M. Bordenick, Esquire
Hearing Attorney
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U. S. Nuclear Regulatory Commission
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Edwin J. Reis, Esquire
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ATTACHMENT 3
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NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

October 27, 1980

Charles Bechhoefer, Esq., Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Emmoth A. Luebke
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. James C. Lamb III
313 Woodhaven Road
Chapel Hill, NC 27514

In the Matter of
Houston Lighting and Power Company, et al.
(South Texas Project, Units 1 and 2)
Docket Nos. 50-498, 50-499

Gentlemen:

The NRC Staff is in receipt of the letter dated October 22, 1980, to Chairman Bechhoefer from Applicant's counsel. This letter was written in response to Staff's letter of October 15, 1980, regarding further steps to be taken in this proceeding. See the Board's Memorandum and Order of September 24, 1980, inviting comments from the parties with respect to what further steps should be taken in this proceeding to implement the instructions of the Commission as set forth in its Memorandum and Order dated September 22, 1980 (CLI-80-32, pp. 16-19).

As anticipated by Applicant at page 5 of its letter, the Staff "[has] differing views as to precisely how the issues should be clarified" Because of this disagreement, the Staff agrees with Applicant in urging that the Board schedule an early prehearing conference at which the Board could finalize both the statement of the issues and a schedule.

Sincerely,

Bernard M. Bordenick

Bernard M. Bordenick
Counsel for NRC Staff

cc: Melbert Schwarz, Jr., Esq.
Mr. Lanny Alan Sinkin
Mrs. Peggy Buchorn
Richard W. Lowerre, Esq.
Jack R. Newman, Esq.
Atomic Safety and Licensing Board Panel
Atomic Safety and Licensing Appeal Board
Docketing and Service Section

DUPE OF
8010280545



ATTACHMENT 4
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555
November 14, 1980

Charles Bechhoefer, Esq., Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Emmeth A. Luebke
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
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Gentlemen:

Enclosed is a copy of a "STP Proceeding Proposed Supplement to Statement of Issues" which has been agreed to between counsel for the NRC Staff and counsel for the Applicant.

Applicant is also arranging to deliver copies to the intervenors today.

Sincerely,

Bernard M. Bordenick

Bernard M. Bordenick
Counsel for NRC Staff

Enclosure
As Stated

cc w/encl: Melbert Schwarz, Jr., Esq.
Pat Coy
Mrs. Peggy Buchorn
Richard W. Lowerre, Esq.
Jack R. Newman, Esq.
Atomic Safety and Licensing Board Panel
Atomic Safety and Licensing Appeal Board
Docketing and Service Section

DUPE OF
8011180041

STP PROCEEDING PROPOSED
SUPPLEMENT TO STATEMENT OF ISSUES*

Issue A. In light of HL&P's performance in the construction of the South Texas Project (STP) as reflected, in part, in the Notice of Violation and Order to Show Cause dated April 30, 1980, and HL&P's responses thereto (filings of May 23, 1980 and July 28, 1980), and actions taken pursuant thereto, do the current HL&P and Brown & Root (B&R) construction QA/QC organizations and practices meet the requirements of 10 CFR Part 50, Appendix B, and thus provide reasonable assurance that construction of STP can be completed in conformance with the Construction Permits and other applicable requirements?

Issue B. In light of the overall record of HL&P's compliance with NRC requirements including:

- (1) the statements in the FSAR referred to in Section V.A.(10) of the Order to Show Cause;
- (2) the instances of non-compliance set forth in the Notice of Violation and the Order to Show Cause;
- (3) HL&P's actions in reply to the Order to Show Cause;
- (4) the extent to which HL&P abdicated responsibility for construction of the South Texas project to Brown & Root; and
- (5) the extent to which HL&P failed to keep itself knowledgeable about necessary construction activities at STP,

—*

The following Statement of Issues is in addition to Intervenor's previously admitted contentions.