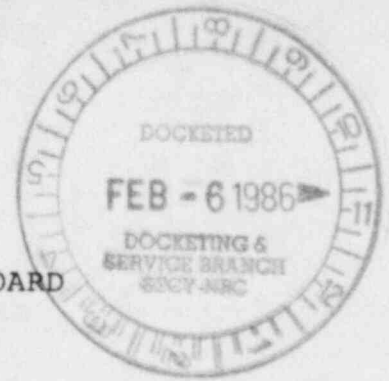


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

APPLICANTS' RESPONSE TO "CCANP
MOTION TO REOPEN THE PHASE
II RECORD: IV; FOR DISCOVERY
AND TO SUSPEND FURTHER
ACTIVITY IN PHASE III"

I. Introduction

By Motion dated January 17, 1986,^{1/} CCANP has again requested that the Phase II record be reopened on the basis of documents which allegedly show, inter alia, that the Quadrex Report was commissioned in preparation for the Phase I hearings. Additionally, CCANP requests broad discovery and suspension of Phase III pending completion of the reopened proceeding.

As explained in more detail below, the information contained in the documents upon which CCANP's Motion is based is consistent with the extensive and uncontroverted evidence in this proceeding and would not alter the result that the Board would reach in its absence. The Motion is also untimely.

Accordingly, CCANP's Motion does not warrant reopening the Phase II record, and that relief, as well as all other relief sought by CCANP in its Motion, should be denied.

^{1/} CCANP Motion to Reopen the Phase II Record: IV; For Discovery and to Suspend Further Activity in Phase III (January 17, 1986) (Motion).

II. Argument

CCANP argues, as it has before, that the Quadrex Report was commissioned in order to prepare for the Phase I hearings, and that HL&P witnesses withheld the Report with an intent to deceive the Board. As a new elaboration on its theory, however, CCANP argues that there was "an overall litigation strategy agreed upon by HL&P and Brown and Root" to use the Quadrex Report in the Phase I hearings (Motion at 14), which was abandoned as a result of the adverse nature of the generic findings and the perceived inability on the part of HL&P and/or B&R to "satisfactorily explain" those findings to the Board (Motion at 10).^{2/}

CCANP's Motion is based primarily upon excerpts of a deposition of Eugene A. Saltarelli in the lawsuit between the STP co-owners and Brown & Root (Document 1), which it couples with a memorandum prepared by Mr. Saltarelli in late 1980 (Document 2).^{3/}

^{2/} CCANP also once again accuses counsel of misconduct and participation in the alleged litigation strategy and conspiracy. In essence, it speculates, without any basis, that there must have been discussion regarding the strategy with Applicants' licensing counsel. Motion at 21. As indicated below, there is no evidence of any such strategy, and, there were certainly no such discussions with Applicants' licensing counsel.

^{3/} CCANP (Motion at 14) also reiterates its argument that the record should be reopened to admit Document 4 from its Motion II (October 16, 1985). However, as the Board found in its Memorandum and Order dated November 14, 1985, at page 11, the portions of Document 4 cited by CCANP "are largely speculative" and cumulative of testimony in the record. CCANP's reargument is simply speculation about that document and provides no basis for modifying the Board's prior ruling rejecting Document 4.

The portions of the deposition upon which CCANP principally relies (Document 1 at 615, 620) do not support its thesis. While Mr. Saltarelli testified that Mr. Goldberg wanted to be in a position to respond to Board inquiries regarding the STP design if such inquiries arose at the Phase I hearings, he was not asked to provide a comprehensive account of his discussion with Mr. Goldberg nor to describe the full context of that discussion.

Thus, Mr. Saltarelli's statements simply confirm the extensive and uncontroverted testimony presented in the reopened Phase II proceeding that, while the purpose of the review was to assess the status of Brown & Root engineering and to determine whether improvements were needed to successfully complete the Project, Mr. Goldberg recognized the additional benefit to be derived from the Report -- that is, that it would enable him, if asked, to respond to questions regarding the engineering work at STP from, among others, the Board.^{4/}

^{4/} CCANP also argues that Mr. Saltarelli's testimony that Quadrex was to assess the "adequacy" of the STP design is inconsistent with HL&P's testimony that the Report was commissioned to evaluate the "status" of the design. Motion at 7, n*. Mr. Saltarelli's use of "adequacy" and HL&P's use of "status" are consistent. HL&P's testimony that the purpose of the review was to assess the "status" of design clearly encompassed the adequacy of B&R's responses to engineering problems and concerns. E.g., Tr. 15509-10, 15514-18, 15524-25, 15548 (Goldberg); 15471 (Thrash); 15588-89 (Oprea). Even CCANP acknowledges that Mr. Goldberg sought a review of "problems B&R was still trying to resolve. . . ." Motion at 7, n*. Furthermore CCANP's suggestion that HL&P's use of the term "status" was intended to mean "percentage completion" (*id.*) grossly mischaracterizes HL&P's testimony. Clearly, such testimony was not so limited.

Tr. 15505-13, 15516-17, 15520, 15523-24, 15548, 15554-56, 15559-60, 15567-70 (Goldberg); Tr. 15398-400 (Jordan); Tr. 15451-53, 15471, 15495-96 (Thrash); Tr. 15548, 15588-89, 15623-24 (Oprea); Tr. 15646-47 (Barker); Tr. 15697-98 (Sumpter).

Mr. Goldberg's testimony in the reopened proceeding regarding his meeting with Mr. Saltarelli described the general context of the meeting in terms consistent with Mr. Saltarelli's deposition. Tr. 15534-35, 15577-78 (Goldberg). As the attached affidavit reaffirms, the conversation between Mr. Goldberg and Mr. Saltarelli took place in the context of their mutual interest in assuring the successful completion of the STP engineering effort and any discussion of the possible value of the Quadrex Report in the licensing hearings was peripheral. Mr. Saltarelli has confirmed Mr. Goldberg's general recollection of their discussion. Attachment A (Goldberg Affidavit) at 1-3.

In short, the deposition excerpts cited by CCANP in its Motion are no different in character than the documents previously considered by the Board in the reopened proceeding. Such documents provide fragmentary glimpses of conversations and meetings, contain statements without full context, and are cumulative of the information already received into the record and addressed at length at the reopened hearings. Taken individually and in a vacuum, they do not accurately reflect HL&P's purposes or motives for commissioning the Quadrex Report. When viewed in context, they are entirely consistent with Applicants' prior testimony. Accordingly, their admission

would not serve to alter the decision which the Board would, otherwise, reach in their absence.

CCANP's arguments with respect to the alleged litigation strategy are similarly without merit. Contrary to CCANP's allegations, Document 2 does not represent a "plan of action for addressing the known engineering problems and the licensing hearings. . . ." Motion at 11 (emphasis added). The memorandum focuses on Mr. Saltarelli's concerns regarding the existing engineering organization and program and the effort he was undertaking to improve the ongoing engineering effort. The very "[o]bjective[s]" specified in the memorandum address the engineering "organization," "[p]lans" and "work assignments." Document 2 at 1. It is evident that hearing concerns were but a minor aspect of the memorandum.

Furthermore, the references to the operating license hearings (Document 2 at 3, 4) suggest that Mr. Saltarelli was referring to operating license hearings in general, and not the Phase I hearings in particular. Apart from the fact that there is no explicit reference to Phase I or the Phase I issues, the thrust of his statements seems to be that, at some stage of the hearing process, it may be necessary to "defend" the design, and that the architect-engineer must be in a position to assist in that effort. That, as the Board is aware, is axiomatic in the modern licensing process.

To the extent that CCANP focuses on references to the role of NUS in the Project's design review program and the

immediately following references to the engineering review to be undertaken by HL&P (Document 2 at 5) as evidence of "an overall litigation strategy agreed upon by HL&P and Brown & Root" (CCANP Motion at 12-13, 14), CCANP is wholly mistaken. There is no indication in Document 2 that Mr. Saltarelli and Mr. Goldberg developed such a strategy -- only that they discussed and reached an understanding on "the approach" of an outside engineering review to be undertaken by HL&P. This is consistent with the substance of the attached affidavit -- that Mr. Goldberg and Mr. Saltarelli did not discuss either the Quadrex review or the NUS efforts in the context of planning any "litigation strategy."^{5/} Tr. 15534-35 (Goldberg); Attachment A (Goldberg Affidavit) at 2.

Finally, while CCANP cites Mr. Saltarelli's view of the generic findings -- that they made "everything sitting out there in Bay City suspect" and that they would be difficult to address "in the licensing arena" (Document 1 at 623-24) -- there is not a shred of evidence to support CCANP's inference that, having received the findings, either HL&P or Brown & Root made any decision or took any action in connection with the Phase I hearings to conceal the Quadrex Report.^{6/} CCANP's

^{5/} Brown & Root's portion of the alleged strategy, the Project's system design review program, was in reality conceptualized in late 1979, and NUS was retained to assist Brown & Root in that program in mid-1980, well before Mr. Goldberg began work on the Project. Clearly, the NUS work was not initiated as part of any plan to prepare for hearings.

^{6/} In fact, Applicants submitted their list of witnesses on March 2, 1981 and their prefiled testimony and proposed exhibits (including the expert reports on welding, backfill and concrete) on April 23, 1981, all before receipt of the generic findings which allegedly altered HL&P's litigation strategy.

assertion is purely speculative.^{7/}

Thus, CCANP offers no basis for questioning the uncontroverted testimony in the reopened proceeding regarding the purposes of the Quadrex review or why it was not mentioned in the Phase I testimony, and no evidence upon which the Board might alter the decision it would otherwise reach on such questions. CCANP's other theories for reopening the record relate to matters that are not material to the issues before the Board and, in any event, do not warrant reopening the record.^{8/} Accordingly, the motion to reopen should be denied.

^{7/} Mr. Saltarelli's testimony does not, as CCANP claims, bolster its position regarding the "seriousness" of the generic findings. Motion at 10. Mr. Saltarelli's complaint was with the scope and format of the generic findings (i.e., they generally questioned Brown & Root's methodology and engineering practices) and the difficulty of responding to such generalized criticisms. He did not indicate that they represented serious, substantiated concerns; in fact, he characterized them as "ill-founded." Document 1 at 624. The Phase II record, of course, included extensive testimony from HL&P, Bechtel and the NRC Staff regarding the implications of the generic findings, none of which is cast in question by Mr. Saltarelli's statements.

^{8/} Mr. Saltarelli's recollection that an unidentified "HL&P licensing engineer" said that "HL&P should not be present" at the "April" (actually May 1) Quadrex briefing of Brown & Root in order to avoid becoming aware of potentially reportable deficiencies (Motion at 8 citing Document 1 at 613-14) was admittedly a vague recollection (Document 1 at 614). In any event, the record shows that the May 1 Quadrex briefing was intended to be a repetition of the previous day's briefing of HL&P (Tr. 11727 (Goldberg)) and there would be no reason for such a statement and no basis for criticism of HL&P.

Dr. Sumpter asked questions at the Quadrex-B&R meetings to assure Quadrex heard all the relevant facts. Tr. 12806 (Sumpter). Neither the excerpt cited by CCANP (Motion at 8) nor any other evidence suggests any effort (FOOTNOTE CONTINUED)

Furthermore, CCANP's piecemeal identification of documents purporting to show that the Quadrex Report was prepared for the Phase I hearings is not timely. CCANP engaged in no discovery in the Phase II proceeding despite ample opportunity to do so. In the course of that discovery, it could have obtained Document 2 and deposed Mr. Saltarelli, who was in charge of Brown & Root engineering during the relevant time frame. CCANP had an obligation to use its best efforts to discover whatever information it deems relevant and to present it in accordance with the hearing schedule. Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 NRC 1211, 1498 n.174 (1981), affirmed, ALAB-698, 16 NRC

(FOOTNOTE CONTINUED)

to interfere or influence Quadrex's opinions and thus jeopardize its independence. On the contrary, the excerpt even suggests that Dr. Sumpter waited for Quadrex to complete its inquiries before initiating additional questions. Document 1 at 618.

Finally, CCANP cites Mr. Saltarelli's statements regarding the Show Cause Order to again argue that HL&P's use of Brown & Root to perform the initial review of the Quadrex Report for reportability represented "a deliberate attempt to minimize the number of findings reported" (Motion at 15-16). This argument is addressed at length in the proposed findings and reply findings. Cf. Applicants' Reply Findings at RII.31-32. The current Motion adds nothing to that discussion since it cites no basis for suspecting that B&R did or could have been expected to do less than an honest professional job of reviewing the Quadrex findings for reportability.

16 NRC 1290 (1982). Moreover, Documents 1 and 2 have been publicly available since May 1985. Cf. Letter to R.D. Martin from J.H. Goldberg dated June 5, 1985. See also letter to Members of the Licensing Board from Lanny A. Sinkin dated June 26, 1985. While it may be permissible to reopen the record despite an untimely motion when presented with significant new information regarding an issue of grave concern, the Board should not countenance CCANP's repeated requests to reopen the record based on documents or information it clearly could have obtained earlier, particularly where that information is of doubtful significance to the Phase II issues.

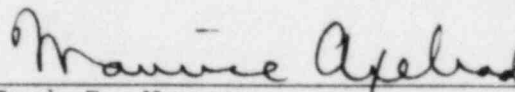
Since CCANP's motion to reopen Phase II should be denied, all other relief sought by CCANP's Motion IV should similarly be denied.

III. Conclusion

CCANP's current Motion is one more in a long series of efforts to excite interest in a scenario built upon speculation of deceit, conspiracy and criminal conduct. There is absolutely no evidence of any such deception or any indication that HL&P's testimony has been less than candid. The documents upon which the instant Motion are based are consistent with HL&P's prior testimony, cumulative of other information already in the record and insufficient to modify the determinations the Board would otherwise reach in their absence.

For the reasons set forth above, CCANP's Motion should be denied.

Respectfully submitted,



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