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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOUSTON LIGHTING AND  
POWER COMPANY, ET AL.  
(South Texas Project,  
Units 1 and 2)

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\* FEB 10 1986 Docket Nos. 50-498 OL  
\* 50-499 OL  
\*  
\* DOCKET

February 3, 1986

STATE OF TEXAS RESPONSE TO  
JANUARY 17, 1986 CCANP MOTION  
TO REOPEN PHASE II RECORD, ETC.

The State of Texas supports CCANP's recent motion to reopen the Phase II record. The documents attached to the motion appear to contain potentially significant evidence regarding the Quadrex Report. The State believes that the record should be fully developed on the important issues surrounding the report.

CCANP's motion demonstrates that it has met the criteria for reopening the record. The State believes that the reopened proceeding should include additional discovery and hearings.

When the Board announced the "broad issues" (Contentions 9 and 10) of the Phase II hearings, it permitted very limited additional discovery. (MEMORANDUM AND ORDER, February 26, 1985, LBP-85-6, \_\_\_ NRC \_\_\_.) The Board directed the Applicants to furnish (at p. 25):

... 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 from from March 1, 1981 through September 28, 1981.

These severe limits precluded from discovery potentially significant evidence--a July, 1984, deposition of a senior Brown and Root official, and his December 1980 or January 1981 memorandum. One wonders what more evidence could be brought to light, especially since the conclusion of the HL&P v. Brown & Root litigation. Clearly, broader discovery is now in order.

While the State has frequently taken a somewhat passive role in these proceedings, it is mindful of their history. Quadrex was hired shortly after the Nuclear Regulatory Commission's decision denying a hearing on an enforcement order. (Houston Lighting and Power, (South Texas Project, Units 1 and 2), CLI-80-32, 12 NRC 281 (1980)) In that decision, the Commission took the opportunity to discuss the operating licence proceeding:

The history of the South Texas Project ... is relevant to the issue of the basic competence and character of Houston. Central to that issue are two questions: whether the facts demonstrate that the licensee has abdicated too much responsibility for construction to its contractor, Brown & Root, Inc., and whether the facts demonstrate an unacceptable failure on the part of Houston to keep itself knowledgeable about necessary construction activities. Either abdication of responsibility or abdication of knowledge, whether at the construction or operating phase, could form an independent 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. ...

We believe that the above issues relating to technical competence and to character permeate the pleadings filed by Citizens. They do deserve a full adjudicatory hearing, as they will no doubt get in the operating license proceeding, and they do deserve expeditious treatment because they could prove disqualifying.

[footnote 4] Equally, and perhaps of more concern, the Commission cannot ignore false statements in documents submitted to it. Congress has specifically provided provided that licenses may be revoked for "material false statements", see section 186a of the Atomic Energy Act, and we have no doubt that initial license applications or renewal applications may also be denied on this ground, certainly if the falsehoods were intentional, FCC v. WOKO, 329 U.S. 223 (1946), and perhaps even if they were made only with disregard for the truth. [citations omitted]

In its order for the Phase II hearings, the Board reiterated its recognition that its rulings on HL&P's character and competence are to be subjected to the results of its Phase II examination of Quadrex issues. (LBP-85-6, supra, p.4)

The need for a full adjudication of HL&P's character and competence will not be met unless the record is reopened with additional discovery and hearings. For that reason, the State of Texas supports the CCANP motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of STATE OF TEXAS RESPONSE TO JANUARY 17, 1986 CCANP MOTION TO REOPEN PHASE II RECORD, ETC. were served by deposit in the U. S. Mail, first class postage paid to the following individuals and entities on the 3rd day of February, 1986:

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