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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

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

CCANP PARTIAL RESPONSE
TO SHOW CAUSE ORDER

On February 7, 1986, the Board issued a Memoradum and Order (additional information required to resolve CCANP motion to reopen Phase II records: IV) which directed CCANP to show cause why the Board should not impose sanctions ranging from the striking of CCANP Motion to reopen Phase II records: IV to the various forms of sanctions contemplated by 10 C.F.R. §2.713(c) for some letters written by Mr. Lanny Sinkin to Mr. Jack Newman. The above and foregoing response is intended to solely address the issue that a sanction of striking the motion would be inappropriate. It is the understanding of the undersigned that Mr. Lanny Sinkin intends to file a response on his own behalf regarding the motive for filing the motion, the letters and whether sanctions are appropriate as contemplated by 10 C.F.R. §2.713(c). The basic contention of the above and foregoing response is that the substantive merits of the motion to reopen is independent of any issue of motive for filing and

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thus this Board should address the motion to reopen as it does any motion to reopen with a high regard for the character and safety issues that are inherently involved with these proceedings.

That the motion (as opposed to the letters) raises significant issues that must be addressed is amply illustrated by the Board's interest in the substantive merits of the motion. As this Board noted in its Show Cause Order:

> Although CCANP advanced this information as part of a Motion to Reopen the record as to HL& P's handling of the quadrex report (contention 9 and/or 10), it appears to us to be equally relevant to HL&P's character and confidence to complete construction of STP. If the individual in question were to remain with the company when STP is in operation, the statement might also bear upon HL&P's character and competence to operate the STP.

In addition, the Board noted that responses of the applicant and staff did not adequately respond to this type of question. Therefore, the Board's own Show Cause Order illustrates that the substantive merits of the motion are independent of its motive for filing and thus striking the motion would be an inappropriate sanction.

Moreover, even the State of Texas has abandoned its "somewhat passive role" in these proceedings to support the motion to reopen concluding as follows:

> The documents attached in the motion appear to contain potentially significant evidence regarding quadrex report. The State believes that the records should be fully developed on the important issues surrounding the report.

The State additionally concluded that "the need for full adjudication of HL&P's character incompetence will not be met unless the record is reopened with additional discovery and hearings." Thus, if this Board were to strike the motion to reopen it would be denying the opportunity for an independent party with the most significant interest in the project, the State of Texas, from participating in further discovery and proceedings on the relevant issues. Thus, striking the motion to reopen is an inappropriate sanction.

CCANP notes that Applicants did not request that the motion to reopen be struck. The Applicants and their counsel are well aware of the procedure for striking a motion to reopen as is illustrated by their earlier filings with regard to the motion to reopen which CCANP voluntarily withdrew from the proceedings. CCANP also notes that the Applicants'main objection was that the letters written by Mr. Lanny Sinkin represented conduct inconsistent with standards of "honor, dignity and decorum" as set forth in 10 C.F.R. §2.73(a). None of the sanctions listed in 10 C.F.R. §2.713(c) involve striking a motion to reopen. In fact, all of the sanctions in 10 C.F.R. §2.713(c) involve sanctions to the representative of a party and not a sanction to a party itself. Thus, striking the motion to reopen would punish CCANP rather than its representative, Mr. Lanny Sinkin.

The letters written by Mr. Sinkin speak for themselves and as stated above, Mr. Lanny Sinkin will address the issue of the motive behind those letters. If the letters did represent a "threat" of any kind, which CCANP denies, they certainly did not involve a "threat" not to file the motion to reopen which was actually filed concomitantly with the dates of the letters.

Thus, striking the motion to reopen would be inappropriate because the objectionable aspect of the letters, if any, do not relate to the filing of the motion to reopen.

The motion to reopen clearly represents an attempt by a representative for a party to fulfil his obligation under the McGuire Doctrine by supplying the Board additional relevant evidence regarding character and safety. The motion to reopen would have had to be brought to this Court's attention regardless of any extraneous correspondence between the parties.

The letters, on the other hand, if they represent anything at all, represent only an overly naive and idealistic attempt to settle this proceeding. There is no doubt that there is not a document that CCANP could produce or prepare which would induce the settlement of this litigation. It is clear that Applicants used the letters as a means of attacking the motion to reopen not on its merits but as an irrelevant side issue. It is ironic that Mr. Newman "cannot conceive of passions running so high" in this proceeding considering the earlier investigation of

Mr. Sinkin's personal military records. In any event, the letters are irrelevant to the motion to reopen and thus striking the motion to reopen would be inappropriate.

It is time for the Board to put away, once and for all, the Applicants' tired, old argument regarding possible discovery by CCANP that might have been done years ago. See, Applicants' Response at page 8. It is also time for the Board to reject once and for all the argument that documents were easily available to CCANP at the Matagorda County Courthouse once the stay was lifted considering the fact that CCANP's counsel work for free and reside in Austin, Texas and Washington D.C. See, Staff's Response at 3 and Applicants' Response at 9. Even the Applicants acknowledge that not all documents involved in the litigation are generally available. See, ST-HL-AE-1346 (South Texas Project Litigation Review Program). It is clear that the Board must take one of two actions: (1) allow broad discovery and not severely limited discovery which allows the Applicants to not produce relevant material like the Salterelli information. See, State of Texas' Response at 2 concluding that the "severe limits precluded from discovery potentially significant evidence -- July, 1984, deposition of a senior Brown Root official, in his December, 1980 or January, 1981 memorandum.") The State of Texas puts it well when it questions as follows:

> 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.

An alternative to the lengthy, time-consuming and adversarial route of ordering broad discovery which CCANP has sought on several occasions would be for the Board to fashion a discovery order which put the burden on the Applicants to produce any and all relevant information available to Applicants from the litigation (whether it was filed with the Court or not filed with the Court) regarding the quadrex report and the motive for authorizing the quadrex report. Given Newman and Holtzinger's and Baker & Botts' involvement in the litigation, such an order would not be overly burdensome to applicants. The Board could then avoid a continuing series of motions to reopen as is occurring presently. Applicants have the resources to officially produce relevant materials known to them. CCANP does not. Given the critical safety issues of interest to the Board, either broad discovery by CCANP or Board-ordered production by the Applicants should begin immediately.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing Response was mailed, first-class postage, to the following on this 21st day of February, 1986.

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