

The Light company

Houston Lighting & Power

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August 30, 1988
ST-HL-AE-2772
File No.: G03.17
10CFR50.54(w)

U. S. Nuclear Regulatory Commission
Attention: Document Control Desk
Washington, DC 20555

South Texas Project Electric Generating Station
Units 1 and 2
Docket Nos. STN 50-498, STN 50-499
Request for Exemption to the
Requirements of 10CFR50.54(w), "Property Insurance"

Pursuant to 10CFR50.12, Houston Lighting & Power Company, (HL&P), as Project Manager for the South Texas Project (STP), acting on behalf of itself and the other participants in STP (the City of Austin, Texas; Central Power and Light Company; and the City of San Antonio, Texas, acting through the City Public Service Board of San Antonio) (collectively referred to as the "Participants") hereby applies for exemption from the decontamination priority requirement (paragraph 3) and the trustee requirement (paragraph 4) of 10CFR50.54(w) (the Property Insurance Rule).

This exemption request applies for both Units 1 and 2, and is supported by the information provided in Attachment 1. In addition, since the exemption forms an amendment to Operating License NPF-76 (for STP Unit 1), Attachment 2 documents the significant hazards consideration performed pursuant to 10CFR50.92.

Based on the discussion in Attachment 2, HL&P has determined that the proposed exemption does not involve a significant hazards consideration. Additionally, based on the information contained in this submittal and the NRC Final Environmental Assessment for STP Units 1 and 2, HL&P has concluded that pursuant to 10CFR51, there are no significant radiological or nonradiological impacts associated with the proposed action and the proposed action will not have a significant effect on the quality of the human environment.

The Nuclear Safety Review Board has reviewed and approved this proposed change.

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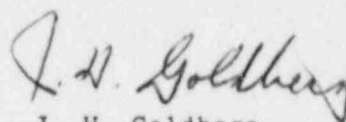
A Subsidiary of Houston Industries Incorporated

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In accordance with 10CFR50.91(b), HL&P is providing the State of Texas with a copy of this proposed exemption.

Pursuant to the requirements of 10CFR170.12(c), enclosed with this exemption request is the application fee of \$150.00.

If you should have any questions on this matter, please contact Mr. M. A. McBurnett at (512) 972-8530.



J. H. Goldberg
Group vice President, Nuclear

JHG/PLW/nl

- Attachment: 1) Justification for Proposed
Exemption to 10CFR50.54(w)
2) Significant Hazards Consideration
3) Check No. 306972

cc

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Houston Lighting & Power Company

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

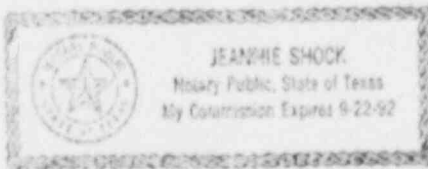
AFFIDAVIT

J. H. Goldberg being duly sworn, hereby deposes and says that he is Group Vice President, Nuclear of Houston Lighting & Power Company; that he is duly authorized to sign and file with the Nuclear Regulatory Commission the attached proposed exemption to 10CFR50.54(w); is familiar with the content thereof; and that the matters set forth therein are true and correct to the best of his knowledge and belief.

J. H. Goldberg

J. H. Goldberg
Group Vice President, Nuclear

Subscribed and sworn to before me, a Notary Public in and for The State of Texas this 30 day of August, 1988.



Jeanne Shock
Notary Public in and for the State of Texas

ATTACHMENT 1
EXEMPTION REQUEST-
SUPPORTING INFORMATION

The following information is provided in support of the requested exemption from the decontamination priority requirement (10CFR50.54(w)(3)) and the trustee requirement (10CFR50.54(w)(4)):

1. The Participants hold a power reactor operating license issued by the Commission for South Texas Project (STP) Unit 1 and a Construction Permit issued for Unit 2 located near Bay City, Texas. Nuclear fuel is expected to be loaded into Unit 2 in December, 1988. Accordingly, the Participants are subject to the requirements of the Property Insurance Rule and are "interested persons" under 10CFR50.12(a). The Participants are entitled, pursuant to that section, to apply to the Commission for an exemption from the requirements of 10CFR50, including the Property Insurance Rule.
2. The Property Insurance Rule currently requires licensees such as the Participants to maintain \$1.06 billion of on-site property damage insurance. Sections (w)(3) and (w)(4) also require, respectively, that the insurance have a priority for paying the costs of placing a reactor in a safe and stable condition and decontaminating it, and that proceeds subject to this priority be payable to a separate trust. Under Section (w)(5)(i), these decontamination priority and trust requirements must be reflected in the licensees' property insurance policies no later than October 4, 1988.
3. The Participants currently are insured under policies issued by the American Nuclear Insurers (ANI) and by Nuclear Electric Insurance Limited (NEIL-II) with respect to losses covered by the Property Insurance Rule. While the NEIL-II policy contains a decontamination liability priority, the ANI policy does not yet incorporate such a priority, though ANI has expressed a willingness to incorporate a similar priority into policies issued by ANI. If ANI provides an amendment adopting that priority before October 4, 1988, the Participants will not need an exemption from the decontamination priority requirement; otherwise, the Participants will need the exemption until the priority is incorporated. However, neither insurer has adopted provisions that would provide for insurance proceeds to be paid to an independent trustee, and indeed the Participants understand that efforts by both the insurers and utility industry groups have yet to identify an entity which would be both suitable and willing to serve as trustee under such circumstances.

Accordingly, compliance with the independent trustee requirement of the Property Insurance Rule will be virtually impossible for the Participants and other licensees. Requiring the Participants to comply with Section (w)(5)(i) of the Property Insurance Rule in the face of this unavailability of insurance policies containing the necessary terms and conditions would be an "undue hardship...significantly in excess of those contemplated when the regulation was adopted..." 10CFR50.12(a)(2)(iii) (one of the six bases for exemption).

4. Moreover, the Participants submit that the trustee requirement of the Property Insurance Rule is unnecessary, unworkable, ineffective, and will likely be counterproductive. In support of this contention, the Participants refer to, and urge favorable consideration of, the Argument in Support of Petition contained in the Petition for Rulemaking filed with the Commission by the Edison Electric Institute (EEI), the Nuclear Utility Management and Resources Council, and certain power reactor licensees on June 21, 1988 (the "Petition for Rulemaking"). The Participants share the concerns expressed in the Petition for Rulemaking that the trustee arrangement will not be effective to shelter funds from competing claims, is unnecessary to ensure required cleanup by utilities, and may not be feasible because of the unavailability of prospective trustees acceptable to the Commission and willing to serve under realistic contractual arrangements. Moreover, the Participants would suggest that the injection of an independent trustee might actually detract from the Commission's goal of achieving timely disbursement of insurance proceeds for decontamination. In view of these problems, application of the trust requirement to the Participants "would not serve the underlying purpose of the rule [and] is not necessary to achieve the underlying purpose of the rule." 10CFR50.12(a)(2)(ii) (another basis for exemption).
5. As described in the Petition for Rulemaking, efforts by the insurers to locate a trustee which would satisfy the requirements of Section (w)(4) of the Property Insurance Rule have proven unsuccessful. Various reasons have been identified for not serving in this capacity by those solicited, including potential conflicts of interest and lack of a trust corpus which would provide an adequate basis for the trustee's revenue. While it may be too early to rule out completely the possibility of completing an acceptable trustee arrangement, it nevertheless is apparent that a viable arrangement cannot be adopted by the nuclear utilities on a wide scale before the October 4, 1988 effective date, and it is doubtful that the Participants acting individually could put into place by then the complex legal documents that would be required, assuming that they could find their own trustee which would meet the Commission's requirements.

In addition, it would seem reasonable to assume that the presence of a trustee could be undesirable in securing prompt cleanup in the event the provisions of the Property Insurance Rule were to be called into play. In the event of competing claims, an independent trustee would be expected to be reluctant to disburse insurance proceeds if a dispute should develop over the magnitude of the funds reasonably needed for cleanup. Instead, the reactor licensees may actually be in the best position to ensure that insurance proceeds are timely applied pursuant to regulatory requirements. Furthermore, as indicated in the Petition for Rulemaking, the concerns expressed by the Commission when the Property Insurance Rule was adopted may no longer be as troublesome and thus may no longer warrant such a complicated solution to achieving the Commission's goal. Thus, the trust requirement rests on factual assumptions which are likely invalid, and there exist "material circumstance(s) not considered when the regulation was adopted" which justify granting of the exemption requested. The public interest will not be served by a requirement which cannot in fact be met. 10CFR50.12(a)(2)(vi) (another basis for exemption).

6. The Petition for Rulemaking requests that, pending completion of rulemaking, the Commission suspend or otherwise relieve licensees from compliance with the trustee requirement of the Property Insurance Rule. The Participants strongly support that request. In the event the Commission determines that it can grant the relief requested in the Petition for Rulemaking on an industry-wide basis before October 4, 1988, this application will become moot, and the Participants would have no objection to the Commission dismissing the application or consolidating it with the Petition for Rulemaking. However, if the Commission determines that it cannot grant timely relief on an industry-wide basis, the Participants respectfully request that the Commission grant the Participants exemptions from the Property Insurance Rule, as specifically set forth below.

On the basis of the foregoing, the Participants request the Commission to exempt them from the trustee requirement of the Property Insurance Rule, and further request exemption from the decontamination priority requirement unless and until there is generally available to Participants markets for on-site property insurance policies containing appropriate decontamination priorities and totalling \$1.06 billion or more in coverage limits.

ATTACHMENT 2
SIGNIFICANT HAZARDS
CONSIDERATION

The Commission has provided standards in 10CFR50.92(c) for determining whether a significant hazards consideration exists. A proposed exemption involves no significant hazards consideration if operation of the facility in accordance with the proposed exemption would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety. HL&P has reviewed the proposed exemption and determined that:

1. The proposed exemption does not involve a significant increase in the probability or consequences of an accident previously evaluated because the exemption only affects funding for decontamination following an accident. There is no impact on the probability of occurrence of an accident or its consequences.
2. The proposed exemption does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.
3. The proposed exemption does not involve a significant reduction in the margin of safety because of the administrative nature of the change.