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RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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USNRC

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF
DOCKETING & SERVICE
BRANCH

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

CITIZENS CONCERNED ABOUT NUCLEAR POWER, INC. (CCANP)
RESPONSE TO APPLICANTS' MOTION FOR PROTECTIVE ORDER

On February 18, 1986, Applicants filed their Motion for Protective Order ("Protective Order Motion"). In said motion, Applicants seek a Board order directing that Applicants need not respond to CCANP's Second Set of Interrogatories to Applicants dated February 4, 1986 ("Interrogatories"), other than Interrogatories 12(a), (b), and (c), nor to CCANP's Second Request for Production of Documents dated February 4, 1986 ("Production Request"). Protective Order Motion at 1.

The essence of Applicants' position is that CCANP is seeking discovery on matters which are not relevant to the only remaining matter subject to discovery in this proceeding - Issue F - and that the discovery sought by CCANP is not reasonably calculated to lead to the discovery of admissible evidence and, therefore, should not be allowed. *Id.*

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Issue F states:

Will HL&P's Quality Assurance Program for Operation of the STP meet the requirements of 10 C.F.R. Part 50, Appendix B?

The matter CCANP seeks discovery on under Issue F is set out in CCANP's Answers to Applicants' Eighth Set of Interrogatories and Requests for Production dated February 12, 1986, Answers 4

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and 5. CCANP contends, in part, that Applicants' preferential handling of both members of the Operations Group implicated in the use and/or sale of drugs and of others who would have implicated members of the Operations Group in such sale and/or use demonstrates a lack of character.

Applicants respond that CCANP is creating a "far-fetched relationship to Issue F that has no bounds." Protective Order Motion at 9.

CCANP herein restates the relationship between the matter CCANP seeks discovery on and Issue F.

If Applicants have a drug control program and if said program has procedures which are to be uniformly applied, then any instance where certain individuals receive preferential treatment is questionable. If those receiving preferential treatment are members of the Operations Group or people who, if punished, would implicate members of the Operations Group, then the questionable treatment relates directly to the operation of STNP. Specifically, if the Operations Group receives special treatment at this point in time, the ASLB has a basis for predicting such preferential treatment in the future. Far from being "too remotely related to the implementation of the STP program during Plant operation," See Protective Order Motion at 10 - 11, this preferential treatment today creates an expectation of similar treatment in the future.

Furthermore, if the Operations Group and those who might implicate the Operations Group received preferential treatment to prevent the Nuclear Regulatory Commission (either the Staff or this Board) from learning about illegal drug use and/or sale in

the Operations Group, then the allegation CCANP seeks discovery on is even more serious. Such actions would serve as a predictor for the ASLB that Applicants will hide information about quality-related problems in the Operations Group from the NRC during operation of the Plant.

The Applicants seem to argue that illegal drug use and/or sale among the Operations Group personnel is not a quality related problem under Appendix B. See e.g. Protective Order Motion at 10. But Applicants admit that the "Nuclear Plant Operations Department is responsible for plant production and production support activities to ensure the safe, reliable and efficient startup, operations, maintenance, and refueling of STP, including adherence to the operating license and technical specifications." Applicants Answers and Objections to CCANP Second Set of Interrogatories to Applicants dated February 18, 1986, Answer 12(b).*/ This group is now undergoing training and writing procedures for operation. Affidavit of Jerrold G. Dewease on the Progress of HL&P's preparation for Operation of STP Since 1982, dated February 14, 1986 at 7 - 10. All of the key staff positions, except one, are already filled. *Id.* at 11. CCANP contends that the use and/or sale of illegal drugs by this Group is a condition adverse to quality and that Applicants' preferential treatment of the Group constitutes a failure to take prompt corrective action. See 10 C.F.R. Part 50, Appendix B, Criterion XVI. It is precisely for this reason that the Office of

*/Based on the Affidavit of Jerrold G. Dewease on the Progress of HL&P's preparation for Operation of STP Since 1982, dated February 14, 1986, Figure 1, the Operations Group also includes Nuclear Security and Nuclear Training. See also *Id.* at 3. item 5.

Investigation agreed to investigate this allegation when generally drug abuse investigations are not considered part of their jurisdiction.

To reiterate CCANP's position, if the allegation of preferential treatment is true, then the answer to Issue F is "No" because Applicants have failed to promptly correct a condition adverse to quality and directly linked to the operation of STNP. Furthermore, if the preferential treatment can be shown to result from a decision to protect the Operations Group from NRC scrutiny, then the matter is raised to the character level.

The Applicants' argument that the Commission is engaged in rulemaking on the drug issue and, therefore, the ASLB is precluded from engaging in an inquiry into CCANP's allegation is irrelevant. Protective Order Motion at 5 - 8. The Commission is hardly formulating a rule regarding whether certain employees can be given preferential treatment when found to be using and/or selling drugs or whether such preferential treatment can be given in order to protect permit or license holders from adverse regulatory action.

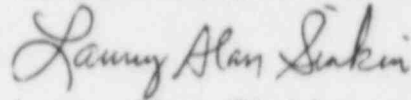
In addition, while Applicants counsel may argue that this matter is not within the purview of Issue F, an argument refuted above, Quality Assurance for Operations is not so far removed from the performance of the Operations group as to place such a matter outside the bounds of the McGuire rule.

Regarding the specific objections to CCANP's Interrogatories and Production Request noted in Applicants' Protective Order Motion, See Protective Order Motion at 11, note 11, CCANP addresses these objections in the accompanying CCANP Motion to

Compel.

For the above and foregoing reasons, the Board should deny Applicants Motion for Protective Order dated February 18, 1986 and instruct Applicants to answer CCANP's Interrogatories and Production Request subject only to the resolution of CCANP's accompanying Motion to Compel.

Respectfully submitted,



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Dated: February 28, 1986
Washington, D.C.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of CITIZENS CONCERNED ABOUT NUCLEAR POWER, INC. (CCANP) RESPONSE TO APPLICANTS' MOTION FOR PROTECTIVE ORDER were served by messenger (*) or by deposit in the U.S. Mail, first class postage paid to the following individuals and entities on the 28th day of February 1986.

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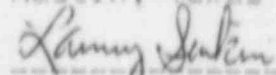
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