UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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)	)	

Applicants' Reply To The Portions Of CCANP Partial Response To Show Cause Order Which Replied To Applicants' Response To CCANP's Motion To Reopen IV

Statement

The CCANP Partial Response to Show Cause Order dated February 21, 1986 (CCANP Partial Response), in addition to making certain arguments in response to the Board's Order dated February 7, 1986, also presents additional arguments replying to portions of Applicants' Response to "CCANP Motion to Reopen the Phase II Record: IV; For Discovery and to Suspend Further Activity in Phase III" (Applicants' Response). In summary, CCANP argues that it should have further discovery rights because, in its view, its opportunity for discovery in Phase II was inadequate and CCANP has not had adequate access to the documents involved in the litigation between the Project owners and Brown & Root.

CCANP had ample discovery opportunity before the hearing in Phase II but failed utterly to pursue that opportunity. The Brown & Root litigation record, including the

documents upon which CCANP's motion is based, has been publicly available since May of 1985. Thus CCANP's January 17, 1986 motion to reopen the record was not timely. The fact that additional files of the litigants in the Brown & Root case have not been made publicly available cannot conceivably affect discovery rights in this proceeding. Accordingly, CCANP's additional arguments in support of its motion have no merit.

Argument

I. The Board Permitted the Parties Ample Discovery Opportunity Before The Phase II Hearing

The CCANP Response characterizes as "Applicants tired, old argument," the statement in Applicants' Response that CCANP had ample opportunity for discovery in Phase II. Partial Response at 5.

What "tires" CCANP is being reminded of the fact that the Board granted CCANP ample discovery before the hearing in Phase II. A discovery schedule agreed upon by all parties provided 90 days of discovery "not limited to Quadrex matters but [covering] all issues . . ." Memorandum (Memorializing Certain Rulings Announced During Evidentiary Hearing Sessions of June 15-17, 1982) (June 24, 1982) at 3. After that period expired an extension of the discovery period was granted to the State of Texas. Memorandum and Order (Granting Attorney General of Texas' Motion for Extension of Discovery Deadline), LBP-83-26, 17 NRC 945 (1983). The State utilized the full range of its discovery rights, including interrogatories to Applicants, the NRC Staff

and Quadrex (by agreement with Applicants), a deposition of Mr. Goldberg, document production, and certain informal discovery. CCANP was given access to the information discovered by the State of Texas. After that discovery period had expired the Board, while recognizing that CCANP had been delinquent in seeking discovery, granted CCANP's request for additional discovery, permitting another period of approximately 90 days for discovery on, inter alia, "the circumstances surrounding HL&P's notification of NRC and the parties about [the Quadrex] report." Memorandum and Order (Ruling on CCANP Motions for Additional Discovery and Applicants' Motion for Sanctions) (May 22, 1984), at 4-5. The Board noted that the 90 day discovery period "may be generous" for the additional discovery permitted. Id. at 6.

Remarkably, CCANP completely failed to utilize the additional discovery opportunities it was afforded by the Board's May 22, 1984 Order. It did not file any interrogatories, it did not take any depositions and it did not request production of any documents. Thus, it can scarcely complain that it did not discover documents relevant to the Quadrex review or that it did not ascertain the views or impressions of individuals.

Moreover, notwithstanding its failure to exercise its discovery rights, CCANP received a substantial amount of information from Applicants in 1985, as a result of the Board's directive to Applicants to produce certain categories of documents relevant to Contentions 9 and 10. 1/ Memorandum and Order

(Phase II Hearings on Quadrex Report Issues), LBP-85-6, 21 NRC 447, 463-64 (1985). Thereafter, in November 1985, yet further document production was required of Applicants after the Board decided to reopen Phase II. See, Memorandum and Order (CCANP Motions II and III to Reopen Record) (November 14, 1985); letter to Members of the Board from Alvin H. Gutterman dated November 29, 1985.

The discovery provided by the Board was certainly adequate. 2/ Moreover, in 1982 CCANP agreed that 90 days for discovery in Phase II would be adequate (Tr. 10664-67), and its actual opportunity for discovery was substantially greater.

II. The Record of the Litigation Between the Project Owners and Brown & Root Has Been Publicly Available Since May of 1985

CCANP, in attempting to justify the untimeliness of its motion to reopen, argues that the Board should ignore the fact that the record in the Brown & Root litigation (including the documents relied upon in the pending CCANP Motion to Reopen the Record) has been available to the public since May, 1985. Its

---

1/ Contentions 9 and 10 were clearly within the scope of all previous Phase II discovery.

2/ CCANP also refers to a statement in the State of Texas' Response that "severe limits precluded discovery [of] potentially significant evidence." CCANP Partial Response at 5. As the Board is well aware, and as discussed in the text above, CCANP's opportunities for discovery in its two 90 day discovery periods in 1983 and 1984 were limited only to the scope of the Phase II issues as then broadly defined. The scope of discovery thus clearly encompassed all of the Quadrex related matters CCANP has sought to raise since the close of the Phase II record. The document production ordered by LBP-85-6 was in addition to previous discovery, and not a limitation of any sort.

two bases for this position are that the courthouse location is not convenient for CCANP counsel and that not all documents are available there. CCANP Partial Response at 5.

The record in the Brown & Root proceeding has been available to the public since May, 1985, and CCANP has been well aware of that fact. Cf. Tr. 11268-69; letter to Robert D. Martin, from J.H. Goldberg dated June 5, 1985. CCANP's representation that its personnel are located in Austin and Washington (CCANP Partial Response at 5) cannot be countenanced as excuse for the lateness of its motion. CCANP chose its representatives and its representatives chose where to reside, where to travel, and how to allocate their resources. 3/ As put by the Commission

> since intervenors have the option to choose the issues on which they will participate, it is reasonable to expect intervenors to shoulder the same burden carried by any other party to a Commission proceeding. While we are sympathetic with the fact that a party may have personal or other obligations or possess fewer resources than others to devote to a proceeding, this fact does not relieve that party of its hearing obligations. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981) ("Statement of Policy"). Thus, an intervenor in an NRC proceeding must be taken as having accepted the obligation of uncovering information in publicly available documentary material. Statements that such material is too voluminous or written in too abstruse or technical language are inconsistent with the

---

3/ Moreover, because of the interest of the Texas Public Utility Commission, all of those documents have been available to the public in Austin (since September 17, 1985) as well as at the Matagorda County Courthouse (since May 1985). Since CCANP's lead counsel is also a coordinator of the South Texas Cancellation Committee, a party to the PUC proceeding, he is undoubtedly aware of the Austin reading room.

> responsibilities connected with participation in Commission proceedings and, thus, do not present cognizable arguments.

Duke Power Company (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 NRC 1041, 1048 (1983).

Neither should the Board be influenced by CCANP's complaint that "not all documents involved in the litigation are generally available." CCANP Partial Response at 5. The fact that the files of the Applicants and their contractors have not generally been made public is hardly unusual; if CCANP had been interested in such materials, it could have sought them through discovery. As described above, CCANP had ample discovery rights. It had the opportunity to take the depositions of any individual (including Mr. Saltarelli), 4/ including those who gave depositions in the Brown & Root litigation. In any event, the deposition of Mr. E.A. Saltarelli and its exhibits, the only documents discussed in the pending CCANP motion to reopen, have been publicly available since May, 1985. CCANP's January 17, 1986, Motion to reopen is clearly untimely. 5/

4/ Mr. Saltarelli, Brown & Root Senior Vice President and Chief Engineer, testified on other issues in Phase I. Saltarelli, et al., ff. Tr. 7536. His participation in the Quadrex review was clearly revealed by Applicants' Exhibits 61 and 62, both of which were produced to the Texas Attorney General and made available to CCANP in 1983.

5/ CCANP's Partial Response concludes with a plea for "broad discovery" on Quadrex issues, including the possibility of requiring Applicants to produce "any and all relevant information." In essence CCANP is seeking discovery to fish for additional issues to raise. The NRC rules preclude such a use of discovery. The Quadrex issues already have been heard by the Board, and there is no further pending issue in controversy which could form the basis for discovery under

(footnote continued)

Conclusion

The further arguments on CCANP's Motion to Reopen IV which are contained in the CCANP Partial Response are without merit, and should be rejected.

Respectfully submitted,

Alvin H Gutterman

Jack R. Newman
Maurice Axelrad
Alvin H. Gutterman
Donald J. Silverman
1615 L Street, N.W.
Washington, D.C. 20036

Finis E. Cowan
3000 One Shell Plaza
Houston, Texas 77002

Dated:

NEWMAN & HOLTZINGER, P.C.
1615 L Street, N.W.
Washington, D.C. 20036

BAKER & BOTTS
3000 One Shell Plaza
Houston, TX 77002

ATTORNEYS FOR HOUSTON LIGHTING & POWER COMPANY, Project Manager of the South Texas Project acting herein on behalf of itself and the other Applicants, THE CITY OF SAN ANTONIO, TEXAS, acting by and through the City Public Service Board of the City of San Antonio, CENTRAL POWER AND LIGHT COMPANY, and CITY OF AUSTIN, TEXAS

(footnote continued from previous page)
10 CFR § 2.740(b)(1), let alone the extremely burdensome and ill-defined search suggested by CCANP. Even if the record were reopened for further hearings, discovery would not necessarily be required, and if there were discovery it would necessarily be limited both by the scope of the issue to be heard and the reasonableness of the required effort. See 10 CFR § 2.740(b)(1)(1985); 10 CFR Part 2, App. A., § IV(a)(1985).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion For Leave To Reply To Portions Of CCANP Partial Response To Show Cause Order" and "Applicants' Reply To The Portions Of CCANP Partial Response To Show Cause Order Which Replied To Applicants' Response To CCANP's Motion To Reopen IV" have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid, or by arranging for delivery as indicated by asterisk, on this 28th day of February 1986.

Charles Bechhoefer, Esq.*
Chairman, Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. James C. Lamb, III
Administrative Judge
313 Woodhaven Road
Chapel Hill, NC 27514

Frederick J. Shon*
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mrs. Peggy Buchorn
Executive Director
Citizens for Equitable Utilities, Inc.
Route 1, Box 1684
Brazoria, TX 77422

Brian Berwick, Esq.
Assistant Attorney General
For the State of Texas
Environmental Protection Division
P.O. Box 12548, Capitol Station
Austin, TX 78711

Kim Eastman, Co-coordinator
Barbara A. Miller
Pat Coy
Citizens Concerned About Nuclear Power
5106 Casa Oro
San Antonio, TX 78233

Lanny Alan Sinkin, Esq.*
Christic Institute
1324 North Capitol Street, N.W.
Washington, D.C. 20002

Ray Goldstein, Esq.
Gray, Allison & Becker
1001 Vaughn Building
807 Brazos
Austin, TX 78701-2553

Oreste Russ Pirfo, Esq.*
Robert G. Perlis, Esq.
Office of the Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Alvin H Gutterman

* By Messenger