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June 13, 1988

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Houston Lighting & Power Company, et al.
South Texas Project, Units 1 & 2;
Docket No. 50-498 OL, 50-499 OL

Dear Mr. Murley:

By letter dated March 22, 1988, Mr. Chilk, the Secretary to the Commission, advised the Government Accountability Project (GAP) that its "Appeal of Director's Decision on the South Texas Project" (GAP Appeal) has been referred to the NRC Staff to determine whether the "Appeal" raised anything that would cause the Director to reconsider his decision dated March 18, 1988 denying GAP's section 2.206 petition (DD-88-3). For the reasons described below, Houston Lighting & Power Company (HL&P), on behalf of itself and the other licensees, urges you to reaffirm the denial of the GAP 2.206 petition.

Background

On January 20, and 21, 1987, newspapers in Texas reported that representatives of GAP had publicly announced that GAP had received information from approximately 36 current or former workers on the South Texas Project (STP) which called into

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question the safety of the Project. Based on the newspaper articles, the Group Vice President-Nuclear of HL&P wrote to the GAP representative urging her to make the substance of the allegations available to HL&P or the NRC to permit investigation and any necessary corrective action. Although HL&P offered a variety of procedural safeguards to assure the anonymity of the allegers and the good faith of HL&P's investigations, GAP declined to tell HL&P the substance of the allegations. When it became apparent, in April 1987, that GAP would not give HL&P access to the allegations, HL&P wrote to the NRC's Executive Director of Operations urging that the NRC investigate the allegations.

Correspondence subsequently revealed by GAP and the NRC shows that at the same time that HL&P was negotiating with GAP for access to the allegations, the NRC was also unsuccessfully urging GAP to make the allegations available for investigation. On May 29, 1987, the NRC issued a subpoena directing the GAP representative, Ms. Garde, to appear to testify about the allegations and to bring with her GAP's records related to the allegations. GAP moved NRC to quash the subpoena, contending that the requested information constituted privileged attorney-client communications and attorney work product. The NRC denied the motion to quash, and ordered Ms. Garde to comply with the subpoena. Nevertheless, when Ms. Garde appeared for her deposition on July 27 and August 5, 1987, she testified only regarding the bases for her claims of privilege and refused to provide the allegations or to produce GAP's records.

On August 14, 1987, the United States, on behalf of the NRC, initiated an action in the United States District Court for the District of Columbia, seeking enforcement of the subpoena. Ms. Garde opposed the Government's Petition, again asserting that the information was privileged as confidential attorney-client communications and attorney work product. GAP intervened on behalf of Ms. Garde, asserting, in part, that disclosure of the identities of the allegers would infringe on their First Amendment rights of association. Based on GAP's arguments, on October 27, 1987, the District Court decided that the subpoena was too broad, and that it should be narrowed to protect the First Amendment rights asserted by GAP. The District Court suggested that the NRC further negotiate with GAP to obtain the information.

On January 26, 1988, GAP filed its 2.206 petition. Documents attached to that petition, and various other documents subsequently disclosed by GAP and the NRC, show that in November 1987, GAP made the allegations available to the ad hoc Safety Significance Assessment Team (SSAT) which NRC organized to investigate them. With the consent of GAP, the SSAT reviewed GAP records describing the allegations and interviewed some of the

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allegers by telephone and others in person. One of the allegers also accompanied the SSAT during its investigation at the STP site. The results of the SSAT investigation published in March 1988, formed a significant part of the factual basis for the Director's Decision. The Director also relied on the results of previous NRC inspections and evaluations previously documented in several Safety Evaluation Reports. Director's Decision at 3. In its Petition and in its Appeal GAP now argues that the SSAT did not have sufficient time to perform a proper investigation of the allegations and that the investigation was inadequate in other respects.

Alleged Inadequacies of the NRC Investigation

The crux of GAP's 2.206 complaint, which is again repeated in its Appeal, is that it believes there is an issue regarding the adequacy of HL&P's quality assurance program and management character and competence and that the Commission should have done more to investigate GAP's belief before it authorized full power operation. Thus, the first part of the GAP Appeal argues that the Director's Decision was improper because the SSAT did not take sufficient time to properly investigate the allegations, the SSAT violated 10 C.F.R 50, Appendix B and the SSAT did not investigate all of the allegations. Although NRC is properly situated to judge for itself whether it was able to perform an adequate investigation, HL&P would like to respond to a few of GAP's arguments.

At the Commission meeting on March 21, 1988, the Commission Staff submitted to the Commission as part of its presentation a computation of the number of staff hours spent on inspection and investigation at STP since 1975 -- over 22,500 hours. ^{1/} The Staff reviewed the fact that the Commission conducted a special investigative inspection in 1979 which resulted in a Show Cause Order. Since 1979, the NRC has maintained a full time resident inspection office at STP. The NRC conducted a detailed review of the facility design and the preparations for its operation, the results of which are documented in the Safety Evaluation Report (NUREG-0781) and supplements that total over 1000 pages. The application has been reviewed by the Advisory Committee on Reactor Safeguards pursuant to 42 USC 2039, and that Committee has provided its advice to the NRC.

The issues of HL&P management's character and competence and alleged harassment/intimidation of employees were the subject of extensive NRC hearings. In accordance with Section

^{1/} Transcript of Commission Briefing on Full Power Licensing of the South Texas Project, Unit 1, March 21, 1988, at 46.

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189 of the Atomic Energy Act, at the request of two intervenor groups, the NRC conducted hearings on the application for licenses to operate STP Units 1 and 2. The intervenors' contentions addressed the character and competence of HL&P management, the adequacy of facility construction and various other issues. An Atomic Safety and Licensing Board, designated pursuant to 10 C.F.R. § 2.704, conducted hearings over 65 days between May 1981 and December 1986, received testimony from over 75 witnesses, including 20 NRC staff managers, inspectors and investigators, and accumulated a hearing record that included approximately 16,000 pages of transcript. In a series of decisions in 1983-86 totalling 394 pages the Atomic Safety and Licensing Board decided that HL&P has the necessary character and competence and recommended issuance of Operating Licenses. LBP-84-13, 19 NRC 659 (1984); LBP-86-15, 23 NRC 595 (1986); LBP-86-29, 24 NRC 295 (1986), and affirmed by the Atomic Safety and Licensing Appeal Board (ALAB-799, 21 NRC 360 (1985); ALAB-849, 24 NRC 523 (1986). The Commission level of inspection effort has remained intensive. Of the approximately 350 inspections and investigations performed since 1975, approximately 90 have taken place since the beginning of 1987, the time period during which GAP began accumulating its allegations.

Thus, GAP's allegations and the response thereto of SSAT and the Director of Nuclear Reactor Regulation do not exist in a vacuum. To the contrary, they exist in an environment in which allegations of the same type have received intensive scrutiny by the Commission and its Staff over a long period of time.

The procedures followed by the SSAT were consistent with the NRC guidance on the conduct of investigations of allegations contained in NRC Manual Chapter 0517, "Management of Allegations" and the NRC Policy Statement on the Handling of Late Allegations (50 Fed. Reg. 11030, March 19, 1985). ^{2/} This NRC guidance makes clear that allegations which are not material to a licensing decision or which are "too vague or general in nature to provide sufficient information for the staff to investigate will receive no further consideration." NUREG-1306 shows that the SSAT fulfilled the requirements of this guidance. It

^{2/} The GAP Appeal asserts that the SSAT violated "10 C.F.R. Part 50, Appendix B Criterion I, which prohibits 'cost and schedule' pressure to override quality review efforts." GAP Appeal at 5. There is no evidence that there was "cost and schedule" pressure on the SSAT or that anything "overrode" its review. Moreover, 10 C.F.R. 50, Appendix B is not applicable to the NRC Staff. That regulation, by its express terms, applies only to Applicants for licenses to construct and operate nuclear power plants, and the recipients of such licenses.

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investigated the allegations which were sufficiently specific to investigate and, in addition, investigated the areas that were the subject of the non-specific GAP allegations. The SSAT determined that the 71 allegations it selected for inspection included the 16 allegations that included specific information and were "representative of the technical concerns conveyed by the allegers represented by GAP, and bounded the 200 allegations." NUREG 1306 at 2-6. At the Commission briefing on the issuance of the full power license for STP Unit 1 the Director of the SSAT, Mr. Calvo, described the investigation and was questioned extensively by the Commission regarding its scope and whether the SSAT had enough time. Transcript at 52-67, 70-72. Mr. Calvo stated that the SSAT "reviewed all [of the] GAP allegations, and has identified no safety issues which will affect safe operation of the South Texas Project facility." Transcript at 53. He also stated that the SSAT had sufficient time and would have taken longer if it had seen the need to do so. Transcript at 62-63.

As described in much greater detail in the SSAT Report and in the Director's Decision, the effort expended by the SSAT was more than sufficient to evaluate GAP's vague and general allegations. Before the inspection team conducted its on-site investigation, it reviewed GAP's files pertaining to the subject allegations. The SSAT had access to these files for approximately two months preceding the on-site investigation. These files consisted of audio tapes of interviews with the allegers, handwritten text extrapolated from the tapes accompanied with supporting information, and allegation data sheets that contained the alpha-numeric identification and brief description of each allegation. During this review, the SSAT identified approximately 700 allegations provided by approximately 35 individuals. Each allegation was reviewed and evaluated for appropriate disposition (Director's Decision at 8), even though many of these allegations were so vague and general that they would not normally be investigated. Director's Decision at 3. However, the Commission Staff investigated "many allegations that would normally have been considered too vague or general, in order to confirm that the types of deficiencies alleged either did not exist or would not undermine safety." Id. at 3. Due to the deficiencies of the allegations in terms of specific details, the SSAT developed a program to compensate for the generalized nature of the allegations. As described in the Director's decision:

An essential part of the SSAT program was the development of detailed inspection plans. These plans (described in NUREG-1306) included all the steps necessary to thoroughly inspect the installed condition at STP and establish a bounding condition for the generalized concerns conveyed by the allegations.

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Director's Decision at 9.

GAP contended in its § 2.206 petition that the SSAT team "was given four days to complete the task and report back to NRC management and the Commissioners." This is a gross distortion of the record. While the SSAT was at the site for four days, it put in several weeks of review before the on-site inspection, the equivalent of eight work days at the site, and additional time reviewing and evaluating inspection reports and supporting data. In total, approximately 3000 staff hours were expended to review the subject allegations. Director's Decision at 10.

GAP also complains about how the SSAT counted and categorized the allegations, but GAP itself has provided several different counts of its allegations. ^{3/} It is apparent that the allegations must be somewhat vague, and subject to being parsed in a variety of ways. In any event, the only issue of importance is whether the SSAT adequately investigated the allegations, regardless of their number. The GAP Appeal provides no basis for questioning the adequacy of the investigation.

The Allegations Specifically Mentioned in the GAP Appeal

1. GAP describes an allegation that "twenty percent of the valves in the plant were installed backwards." GAP Appeal at 13, 14. In support of this allegation GAP cites (and misconstrues) Exhibit 1 to its Appeal, a copy of an internal STP report on the results of quality control inspections during the week ended April 25, 1986. GAP asserts that this report shows that "valves were installed reversed 20 percent of the time." GAP Appeal at 14. ^{4/}

^{3/} In its May 29, 1987 Petition seeking to quash the subpoena of Billie Pirner Garde, GAP mentions "over 400 serious safety allegations" (at 1), and "over 500 allegations . . . an overwhelming number (50%) pertain to the safety of the plant . . ." (at 4). In its 2.206 Petition dated January 26, 1988 GAP cites "over 60 " allegations (at 9), and in its Appeal dated March 18, 1988 it cites "nearly 700" (at 5).

^{4/} GAP also cites its Exhibit 1 as basis for stating: (a) the reject rate for instrumentation was an "incredibly high" 67 percent; and (b) "100 percent of the engineering inspection point (sic) for small bore hangers was missing or incorrect." GAP Appeal at 13, 14. Neither point is relied upon by GAP for any argument, and both are laced with innuendo that is without merit. The "incredibly high"

(footnote continued)

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GAP misconstrues the data in several respects. First, Exhibit 1 does not show that many valves were reversed. The figure of 20 percent that has been highlighted by GAP is based on only one valve having been found to be reversed.^{5/} It does not represent all of the valves in the plant, nor all of the instrumentation valves, nor all of the instrumentation valves installed during the week ending April 25, 1986. There is no basis for extrapolating from that single valve to the remainder of the valves in the plant. Moreover, Exhibit 1 reports the data for

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reject rate was based on only the 15 inspections during the week ending April 25, 1986. These represent a small portion of the more than 4000 such instrumentation installations in STP Unit 1, which experienced an overall reject rate under ten percent.

The reject rate for final inspections of hangers for small bore pipe was 30 percent, or 8 of the 27 that week. Of the 8 rejects, five were for hardware problems and three related to paper work. The latter three were due to a missing or incorrect Engineering Inspection Point. Thus, GAP's figure of 100 percent actually relates to three of 27 inspections. In any event, Engineering Inspection Points are not required by NRC regulation, and their omission would not affect safety. HL&P required Field Engineers to inspect these installations prior to the Quality Control Inspection for acceptance, to increase the assurance that installations would be ready for acceptance by the Quality Control Inspectors. Regardless of whether there was any Engineering Inspection, the Quality Control Inspectors covered the acceptance attributes and would identify any concerns not found by Engineering. Moreover, as shown by Exhibit 1, Quality Control determined if an Engineering Inspection Point was omitted.

^{5/} This can be seen by a careful reading of Exhibit 1. The first page of Exhibit 1 reports the results of the 15 instrumentation final inspections that week. Of those 15 inspection there were ten rejections, including five hardware related rejections. The seventh page of the exhibit, titled INSTRUMENTS, shows that 20 % of the hardware rejections were due to "valve reversed." In other words, one fifth of the five instrumentation rejections (i.e., one) was due to identification of a reversed valve. It should also be noted that those instrument inspections encompassed the instrumentation mounting and associated tubing, tube track, and supports. Each inspection therefore consisted of a number of attributes ranging from dozens to hundreds, any one of which could be the basis for rejection of the installation.

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only a single week during a construction process that took years. The results for one week, without more, cannot reasonably be assumed to represent performance over a period of years. This is particularly true here, since the data cited by GAP in Exhibit 1 is extremely limited.

Second, the valve is no longer reversed. Exhibit 1 shows that the reversed valve was identified in a QC inspection. As required by 10 C.F.R. 50, Appendix B, Criterion XV, the inspection finding resulted in correction of the deficiency; the one valve that was found to be installed reversed was removed and reinstalled in proper orientation. If any message is to be drawn from this report about the quality of valve installations generally at STP, it is that where a valve was installed improperly, it was detected by the quality control program and corrected.

Third, the STP QA program would have prevented recurrent improper installation of valves. Exhibit 1 is an example of a weekly report identifying the results of inspections and the cause of deficiencies. Such reports were used to identify any need for action to prevent the recurrence of deficiencies. If there had been repeated instances of valves being installed backwards, HL&P and its contractors would have taken action in accordance with 10 C.F.R. 50, Appendix B, Criterion XVI, to prevent the repetition of such errors.

Fourth, testing of the systems would have detected the alleged backwards valves. Prior to the start of the SSAT investigative effort STP completed extensive pre-operational and start-up testing which would have identified the condition alleged by GAP (i.e., 20 percent of the valves backwards). The pre-operational and start-up testing was subjected to intensive NRC inspection.

In short, there is no reason why the SSAT should have considered GAP's Exhibit 1 as evidence that supports the preposterous allegation that 20 percent of the valves are installed backwards.

2. A second allegation mentioned by GAP is that "installed equipment is not properly reflected by the as-built design drawings." GAP Appeal at 14-15. GAP cites as evidence in support of this allegation its Exhibit 2, which reflects a clarification of the assigned responsibility between different EBASCO groups for technical review of the installation documents which support ASME N-5 certification packages. 6/ GAP claims

6/ GAP alleges that EBASCO "terminated the responsibilities of the final quality review for the N-5 group and changed it to
(footnote continued)

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that the SSAT investigation of this claim was flawed because the SSAT based its resolution of the issue on review of the Reactor Makeup Water and Essential Cooling Water systems. According to GAP, this sample size was inadequate, and "more importantly, the section of pipe that the staff looked at had already been subjected to various inspections and reviews while the alleged was working according to the original procedures." GAP Appeal at 14.

Apparently GAP's first criticism is based on the premise that the SSAT should have been required to reinspect all or large parts of the plant because the allegation was vague and did not identify any specific deficiencies. There is no valid basis for this position. In essence, the allegation, as reported in Section 5.9 of the NUREG-1306, and by GAP at 14-15, was that documentation of actual plant configuration was generally incorrect. It was reasonable for the SSAT to test that generalization by review of a sample. Moreover, the SSAT also performed a review of procedures, records of NRC inspections and project investigation, inspection, audit and surveillance activities. NUREG-1306 at 5-80 through 5-84.

As to GAP's "more important" criticism, it is based on the assertion that the piping reviewed by the SSAT was installed before the December 4, 1985 clarification of responsibilities within EBASCO reflected by Exhibit 2. The work on the Reactor Makeup Water System N-5 packages was done during that early time frame (i.e., 1985), but the packages for the Essential Cooling Water System were completed in 1987, long after the clarification of responsibility for the technical review of N-5 packages. Thus, the work reviewed by the SSAT was representative of both periods.

3. The balance of the GAP criticisms of the SSAT investigation relate to several cases currently pending before the Department of Labor under Section 210 of the Energy Reorganization Act of 1974. HL&P has investigated each of the cases to assure that the contractors engaged in the design and construction of STP are complying with the requirements of Federal law and regulations, including the provisions of Section 210. It also has been performing Quality Assurance audits of contractors' personnel systems to assure that the contractors are in compliance with Section 210 and 10 C.F.R. 50.7. Based on

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a straight accounting task, eliminating the requirement for verification of correctness, completeness, and the as-built walkdown." GAP Appeal at 14. That is simply not true; such verification continued to be done by EBASCO.

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these audits, actions have been taken to strengthen the contractor programs that assure compliance with Section 210 and Section 50.7.

HL&P's conclusion that it and its contractors are complying with the law and regulations is supported by the fact that there have been only a few complaints filed out of the tens of thousands of individuals who have been employed at STP. The fact that some cases are pending before the Department of Labor is not material to the NRC licensing decision. However, if the Department of Labor decides against the employers, HL&P will review the decisions to determine if additional action is required to assure compliance at STP. In that eventuality, GAP will certainly be able to bring that matter to NRC's attention, and the NRC can then determine if further action is required.

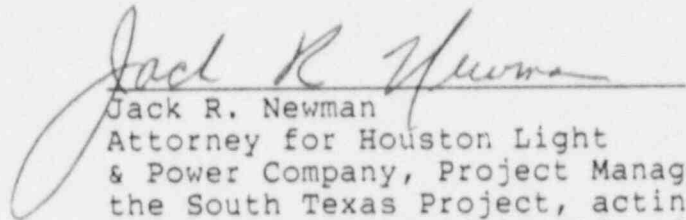
The GAP Appeal refers only to a few quality concerns of the complainants in those Section 210 cases, and does not provide any specific allegations about the safety of STP. At page 16, GAP cites a concern raised by Mr. Goldstein about a "thermoweld", but does not contend that this was an allegation that SSAT did not properly investigate. HL&P investigated and resolved this allegation when it was reported to it by Mr. Goldstein. GAP cites no basis for questioning that resolution. 7/

7/ This appears to be the allegation discussed by NUREG-1306 at 5-86. If so, the NUREG indicates that Mr. Goldstein agreed that the concern was properly resolved.

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The GAP Appeal also mentions coatings allegations and complains that the SSAT interviewed only one coatings inspector and that that inspector had additional information not reviewed by the SSAT. However, nowhere does GAP provide such information or otherwise identify any deficiency in the quality of STP construction.

Respectfully submitted,



Jack R. Newman
Attorney for Houston Light
& Power Company, Project Manager of
the South Texas Project, acting
herein on behalf of itself and the
other licensees, 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

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
HOUSTON LIGHTING & POWER) Docket Nos. 50-498 OL
COMPANY, ET AL.) 5C-499 OL
)
(South Texas Project,)
Units 1 and 2))

CERTIFICATE OF SERVICE

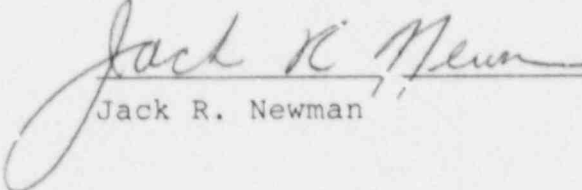
I hereby certify that copies of the letter to Thomas E. Murley from Jack R. Newman, dated June 13, 1988, have been served on the following individuals and entities by deposit in the United States mail, first-class, postage prepaid, or by arranging for delivery by messenger as indicated by asterisk, this 13th day of June, 1988.

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Jack R. Newman