

541
RELATED CORRESPONDENCE

DOCKETED
USNRC

3/21/86

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
'86 MAR 26 A10:27

OFFICE OF GENERAL COUNSEL
DOCKETING & SERVICE
BRANCH

In the Matter of

HOUSTON LIGHTING AND
POWER COMPANY, ET AL.
(South Texas Project,
Units 1 and 2)

(
)
(
)
(
)

Docket Nos. 50-498 OL
50-499 OL

CITIZENS CONCERNED ABOUT NUCLEAR POWER, INC. (CCANP)
MOTION TO COMPEL PRODUCTION OF DOCUMENTS

On March 6, 1986, Applicants filed their Applicants' Response to CCANP's Second Request for Production of Documents ("Objections"). Applicants refused to produce any of the documents requested by CCANP, interposing objections to all of CCANP's requests.

In this motion to compel, CCANP responds to Applicants objections, either by answering said objections or by modifying CCANP's instructions or requests in response to said objections.

General Objections

A. Applicants object to CCANP's entire Second Request for Production of Documents on the grounds that the documents requested relate solely to alleged illegal drug use at STNP and the programs in place to detect such use. Objections at 1. Applicants persist in mischaracterizing the nature of CCANP's inquiry. CCANP is not primarily concerned under Issue F with "the adequacy of HL&P's drug abuse detection and prevention program." See e.g. Applicants' Motion for Summary Disposition on Issue F at 12.

8603270276 860321
PDR ADOCK 05000498
G PDR

As was made quite clear in CCANP's answers to Applicants Eighth Set of Interrogatories, the information CCANP received was

that the drug abuse detection program, whether adequate or inadequate, had in fact detected the sale and/or use of illegal drugs, that members of the Operations Group were implicated in said sale and/or use, that personnel who might have implicated the Operations Group were not terminated while others in similar circumstances were terminated, and that such selective terminations were part of a deliberate attempt to protect the Operations Group from exposure. CCANP Answers to Applicants' Eighth Set of Interrogatories and Requests for Production of Documents dated 2/12/86, Answer 5.

The discovery CCANP seeks is, therefore, designed to illuminate the programs in place at STNP for drug detection and how those programs were implemented, not in order to evaluate the adequacy of the programs but rather to be able to pinpoint those instances where the implementation did not follow normal procedures and resulted in selective enforcement such that the Operations Group received special protection.

Applicants also try to use the existence of Commission rule making as a basis for barring litigation of this issue. Objections at 2. CCANP has already responded to the irrelevant nature of this argument by Applicants. See CCANP Response to Applicants' Motion for Protective Order dated 2/18/86, at 4. To illustrate CCANP's response by analogy, if the Commission were engaged in a generic rule making about the design of the emergency core cooling system, that rule making would not foreclose litigation of a contention that Applicants were using unqualified engineers to design their ECCS or that the Applicants were using a design for the ECCS which they knew to be

inadequate.

B. Applicants object to Instruction 1 as unduly broad. Objections at 2. This objection is similar to the objection raised by Applicants in response to a similar instruction in CCANP's Second Set of Interrogatories. See CCANP's Second Set of Interrogatories to Applicants dated 2/4/86, Instruction 2; Applicants' Answers and Objections to CCANP Second Set of Interrogatories to Applicants dated February 18, 1986 at 2 - 4. Applicants anticipate a willingness on CCANP's part to modify this production instruction in a manner similar to the modification of the interrogatory instruction previously agreed to by CCANP. See CCANP Motion to Compel dated 2/28/86, at 1; Objections at 4.

CCANP is willing to similarly modify this instruction for the requests for production. The basis for Applicants objection to the modified instruction is that "it is not reasonable to require HL&P to produce documents that are not in its possession or readily available to it" and the speculation that "there may very well be records which are not so available." The Applicants do not state or contend that the records requested by CCANP are not readily available.

CCANP rejects out of hand the Applicants argument that documents in the hands of its contractors are not discoverable. As the license holder, Applicants are responsible for all the actions of their contractors. In choosing to place themselves under the Commission's regulatory system, Applicants chose to accept the burden of this responsibility. They cannot abdicate that responsibility or fail to remain informed by claiming the

records of their contractors are "unavailable" to them.

C. Applicants object to Instruction 3 as not authorized by the Commission's rules, unduly vague, and improperly attempting to shorten the time permitted by the rules to reply to requests for admissions. The records requested by CCANP are the records kept by the Applicants and their contractors. The instruction is an attempt to avoid wasting valuable hearing time establishing the authenticity of documents known to come directly from Applicants. CCANP contends compelling adherence to such an instruction is well within the discretion of the Board and conducive to the expeditious conduct of the hearings process.

D. Applicants object to Instruction 4 as going beyond the requirements of 10 C.F.R. Section 2.740(e). CCANP accepts Applicants position, except, of course, for any additional responsibility imposed by the McGuire rule.

E. Applicants object to the entire Request for Production as seeking information not relevant to allegations regarding Plant operations personnel. Objections at 5 - 6. As CCANP explained earlier, the discovery pattern pursued by CCANP is designed to provide the background of the Applicants drug control process and its implementation in order to pinpoint instances of favoritism involving the Operations Group. CCANP Motion to Compel dated 2/28/86, at 2-3. All of CCANP's requests for production are part of this overall discovery pattern.

F. Applicants object to Instruction 5 in the mistaken belief that Instruction 5 requires Applicants to produce documents in a particular order. The instruction merely directs that for each item supplied in response to a request for production of

documents, the item be identified as to which production request it constitutes a response.

Objections to Individual CCANP Requests

Objection to Request for Production 1

A. Besides the general objections noted above, Applicants object to Request 1 as unduly vague. CCANP herein clarifies that request to be those documents which contain the basic description of the various programs for detection of the use and sale of illegal drugs by Project employees, including but not limited to documents describing the programs, the procedures to be followed in such programs, the organizational responsibilities for implementation of such programs, and all revisions of such programs in the time period indicated.

B. Applicants object further to Request 1 as requiring information pertaining to confidential investigative techniques, the disclosure of which would be detrimental to Applicants and contrary to public policy. Objections at 7 - 8. Applicants indicate that they would seek a protective order should the Board order such information be provided. As indicated earlier by CCANP, CCANP views such protective orders as the appropriate response in areas where the Applicants consider the material to be provided as confidential. CCANP's Motion to Compel dated 2/28/86, at 2. CCANP has no objection to the entering of such a protective order.

Objection to Request for Production 2

A. In addition to the objections noted above, Applicants object to Request for Production 2 as contrary to public policy and an invasion of privacy. Objections at 8 - 10. At the same

time, Applicants recognize that an appropriate protective order can prevent most of the problems Applicants are worried about. Id. at 10.

The remaining problem is the Applicants concern that Project personnel will learn that their identities or identities of others had been provided to non-Project entities. Certainly there is no expectation on the Project that such information will not be provided to the Nuclear Regulatory Commission, if the Commission so requests.

As a party to this proceeding, CCANP is entitled to a hearing on contested safety issues. The right to a hearing without the right to discover the evidence needed to resolve the contested issue would be a hollow right indeed.

Applicants simply cannot place themselves in the position of a public investigatory agency and claim the privileges such agencies currently enjoy. Applicants chose to conduct their own investigations rather than providing the information to a law enforcement agency. There is pending an allegation that the Applicants investigation served to obstruct public agency oversight. Applicants cannot now hide the information necessary to resolve this allegation. The resolution of this allegation is more important than the strained arguments by Applicants regarding some speculative damage to Applicants future investigations.

B. Applicants further object to providing the polygraph results because "no basis has been shown for concluding that CCANP has the resources to obtain a qualified expert to evaluate such data." Objections at 11. CCANP finds a certain humor to this

objection. Applicants want the Board to find that as a party to this proceeding CCANP was obligated to review three million pages of records taken in discovery in the Brown and Root law suit, even records which were not available through the court but only in a proceeding 1800 miles away to which CCANP was not even a party. See 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 undated, served February 28, 1986, at 1 - 2; Applicants' Response to "Citizens Concerned About Nuclear Power, Inc. (CCANP) Motion to Reopen the Phase II Record: V and For Board Ordered Production of Documents by Applicants" dated March 14, 1986, at 2, note 2; CCANP Motion to Reopen the Phase III Record: V and for Board Ordered Production of Documents by Applicants served 2/28/86, at 9; see also Inspection Reports 85-23/85-20 dated March 7, 1986 [an NRC review of the STP Litigation Review Program which involves 58 people evaluating 5,600 assertions]. Yet Applicants now wish to interpose an objection that CCANP lacks resources in order to avoid production of documents. CCANP is in fact aware of a qualified expert who might assist in evaluating these records but has made no attempt to discuss this matter pending a ruling from the Board on whether CCANP will receive these documents.

Objection to Request for Production 3

A. In addition to the general objections responded to above, Applicants object to Request for Production 3 as unduly vague. CCANP is willing to limit said request to all documentation relevant to the decision to conduct each test, the selection of personnel to be tested, the questions to be asked, and the

interpretations, analyses, and other evaluations of the results of the polygraph tests.

B. Applicants also object that such information is confidential. Again, CCANP has no objection to an appropriate protective order.

Objection to Request for Production 4

A/B. In addition to the general objections responded to above, Applicants object to Request for Production 4 on the grounds that the information requested is confidential. CCANP has no objection to an appropriate protective order.

C. In addition to the confidentiality argument, Applicants object to the request as calling for documentation of investigations "being conducted," a matter which Applicants argue is irrelevant. If Applicants are willing to stipulate that all investigations resulting from the polygraph tests at issue have been concluded, i.e. that any investigation "being conducted" are not connected to those polygraph tests, then CCANP is willing to drop this request for production.

Objections to Request for Production 5

In addition to the general objections responded to above, Applicants object to Request for Production 5 on grounds of confidentiality. CCANP has no objection to an appropriate protective order.

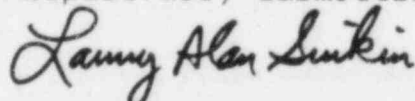
Objection to Request for Production 6

A/C. In addition to the general objections responded to above, Applicants object to Request for Production of Documents 6 on grounds of confidentiality. CCANP has no objection to an appropriate protective order.

B. Applicants also object to producing the exit interviews requested by CCANP because they "may not include any information relevant to plant operations or to allegations of drug use by Project employees, and may include other confidential information not relevant to the drug use question CCANP seeks to raise." CCANP is willing to modify its production request to cover only those parts of the exit interviews which relate in any way to plant operation or the drug investigations CCANP asked about in Interrogatory 4 of CCANP's Second Set of Interrogatories to Applicants.

For the above and foregoing reasons, CCANP moves the Board to compel Applicants to produce all documents requested in CCANP's Second Request for Production of Documents to Applicants subject to the modifications agreed to herein.

Respectfully submitted,



Lanny Alan Sinkin
Christic Institute
1324 North Capitol Street
Washington, D.C. 20002
(202) 797-8106

Counsel for Intervenor,
Citizens Concerned About
Nuclear Power, Inc.

Dated: March 21, 1986
Washington, D.C.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOUSTON LIGHTING AND
POWER COMPANY, ET AL.
(South Texas Project,
Units 1 and 2)

(
)
(
)
(
)

Docket Nos. 50-498 OL
50-499 OL

DOCKETED
USNRC

86 MAR 26 A10:28

OFFICE OF
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I hereby certify that copies of CITIZENS CONCERNED ABOUT NUCLEAR POWER, INC. (CCANP) MOTION TO COMPEL PRODUCTION OF DOCUMENTS were served by hand (*) or by deposit in the U.S. Mail, first class postage paid to the following individuals and entities on the 21st day of March 1986.

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

*Dr. James C. Lamb, III
Administrative Judge
313 Woodhaven Road
Chapel Hill, North Carolina 27514

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

Mrs. Peggy Buchorn
Executive Director, C.E.U.
Route 1, Box 1684
Brazoria, Texas 77422

Diane Curran, Esquire
Harmon, Weiss & Jordan
2001 S Street, N.W., Suite 430
Washington, D.C. 20009

Pat Coy
5106 Casa Oro
San Antonio, Texas 78233

Ray Goldstein
Gray and Becker
901 Vaughn Bldg.
807 Brazos
Austin, Texas 78701

Lanny Sinkin
Lanny Sinkin

Brian Berwick, Esquire
Asst. Atty. Gen.
State of Texas
Environmtl. Protection
P. O. Box 12548, Capitol Sta.
Austin, Texas 78711

*Dreste Russ Pirfo, Esquire
Office of the Exec. Leg. Dir.
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

*Jack R. Newman, Esquire
1615 L Street, NW, Suite 1000
Washington, D.C. 20036

Meibert Schwarz, Esquire
Baker and Botts
300 One Shell Plaza
Houston, Texas 77002

*Atomic Safety and Lic. Bd.
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

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

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