

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of )  
 )  
HOUSTON LIGHTING AND POWER CO. )  
(South Texas Project, Units 1 & 2) )  
\_\_\_\_\_ )

Docket Nos. 50-498  
50-499

CCANP BRIEF ON  
"CHARACTER"

As a result of numerous investigations resulting in findings of repeated violations of NRC standards and regulations, the basic competence and character of the license applicant, Houston Lighting and Power Co. has come into question as a principal issue in these licensing hearings. The purpose of this brief is to provide some outline to the broad concept of "character" as a guide to evidentiary questions at trial.

1. The Atomic Energy Act provides that:

Each application for a license hereunder shall be in writing and shall specifically state such information as the Commission by rule or regulation may determine to be necessary to decide ... the character of the applicant .... 42 U.S.C. §2232 (emphasis added).

The character of the applicant is an essential and one of the very few statutorily mandated criteria for receiving a license from the Nuclear Regulatory Commission for construction or operation of a nuclear power plant. The Act goes on to provide that:

Any license may be revoked for any material false statement in the application ... or because of conditions revealed by such application ... or any report, record or inspection or other means which would warrant the Commission to refuse to grant a license on an original application. 42 U.S.C. 2236.

Accordingly, a finding of inadequate character would be grounds for either denying or revoking a license.

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2. The prominent place which the question of character takes in the license application process is integral to the whole regulatory scheme by which the licensee is given primary responsibility for the construction and operation of a safe reactor. The NRC does not itself take front line responsibility for assuring that a plant is either built or operated safely. Rather the licensee is required to follow procedures established by the NRC, or approved in the licensing process, which are designed to assure the safe construction or operation of the reactor. The role of the NRC is essentially that of an auditor, to see that procedures are followed. This reliance on the licensee demands as an essential element of the whole regulatory scheme that the licensee demonstrate responsibility, reliability, honesty and care in executing the procedures that are the only assurance that a reactor will be built and operated safely. The character of the licensee stands, in this regulatory scheme, as the principal bulwark against the untold health consequences of excessive emissions of radiation into the environment or the potentially catastrophic effects of a nuclear reactor "class nine" accident. (For an instructive comparison between the effect of a serious reactor accident and that of a one-megaton nuclear weapon see "Catastrophic Releases of Radioactivity," Scientific American, April 1981, Vol. 244, No. 4, pp. 41-47. This article concludes that the area of land contaminated by the reactor accident is smaller (somewhat more than half at a 10 rem dose rate) "but the land stays contaminated longer," id. 45.) Once the character of the licensee is brought into doubt, as it has in this proceeding, it becomes the most important question by far to be faced by the licensing authority.

3. The Atomic Energy Act has not sought to define in detail the character required to take responsibility as a licensee for the construction and operation of a nuclear reactor. Indeed the Supreme

Court has stated that,

Reputation and character are quite tangible attributes, but there can be no legislative definition of them that can automatically attach to or identify individuals possessing them, and necessarily the aid of some executive agency must be invoked. Hall v Geiger-Jones Co., 242 U.S. 539, 553 (1917)

As a general matter, where the legislature has not provided an express directive, the term character should be given its commonly understood definition. Mester v. U.S., 70 F.Supp. 118 (E.D.N.Y. 1947) at 122. But the administrator must weigh those attributes of character most heavily that are most significant for proper discharge of a licensee's responsibilities.

4. Most broadly, character is the moral quality of a person which constitutes his intrinsic nature. Daley v License Appeal Commission, 211 NE2d 573, 576. This is equally true of a real person or the corporation, which has a fictional personality comprised of all those who control the corporation. In the cited case the license of a small corporation was challenged on the basis of the character of its president. For a large diffusely controlled corporation, the character of many more persons contributes to making up the corporate character. In addition to the corporate officers and top management, there is the Board of Directors and even principal shareholders, who through exercise of control over corporate affairs lend to its composite corporate character. The very diffuseness of this control and inability to fix a precise locus of responsibility for determining the overall corporate character gives the corporate character the same intrinsic nature as that of a real person.

A Court of Appeals has stated that,

"Character" is a generalized description of one's disposition in regard to a general trait such as honesty, temperance or carefulness... Frase v Henry, 444 F.2d 1228 (10th Cir. 1971).

A corporation, as the composite of those who control the corporation,

similarly displays a character defined by its inherent disposition with regard to certain traits such as honesty, reliability, carefulness, regard for regulations imposed by law and willingness to take responsibility.

This intrinsic quality of character distinguishes it from mere questions of competence. Competence can be acquired through training and experience, admonition and correction of past errors. In the corporate context competence can be bought in the form of hiring persons with the competence not already possessed by the employees of the corporation. Character though is less mutable. It persists in the face of admonitions and experience, much as the violations involved in this proceeding lasted through numerous inspections and warnings. Absent a radical change in the control of a corporation, the corporate character will remain just as immutable as that of a real person. Any repetition of behavior that has come under continued reprimand or serious punishment in the past should be attributed to corporate character. A lack of willingness, even anxiousness, to conform to the requirements of a license after such experience certainly displays a failure of the character necessary to properly construct and operate a nuclear reactor.

5. The NRC has not yet had occasion to lend regulatory definition and detail to the legislative requirement that a licensee show adequate character in its application. The first serious questioning of the adequacy of an applicant's character has occurred only in the present proceedings and those regarding the restart of Three Mile Island, Unit 1. The NRC, in its September 22, 1980 Order did provide important contours to the concept of character for the proceedings by identifying two important patterns which the allegations against Houston Light and Power revealed;



- i) failure to keep itself knowledgeable about the construction of the plant, and
- ii) abdication of responsibility for construction.

It is of course axiomatic that only the licensee bears responsibility for the construction of the facility. E.g. VEPCO(North Anna) 6 NRC 1127 (1977).

In this same September 22, 1980 Order the NRC also suggested that character, rather than something of a lesser order, may be involved in the applicant's deficient conduct. In response to several reasons or "root causes" offered by the applicant for its conduct the NRC queried whether these problems were "themselves symptoms of some other and more basic deficiencies." (Slip Op. 5, n.2). The NRC also indicated that history and the repetitious nature of the conduct would also be relevant to the issue of character, id. 17. It is clearly past conduct and not promises or future projections that constitutes character.

6. A number of cases from the analogous context of Federal Communications Commission licensing have helped define the term "character" as used in the licensing context. For example in Barrow v FCC, 285 F.2d 666, 668 (D.C. Cir. 1960) it was said that,

Character in respect to a radio operator obviously includes reliability in the situations in which such an operator must operate.

In another case "disregard for regulatory laws" was considered an important indication of character inadequacy. Mester v. U.S., *supra*. Commissioners Gilinsky and Bradford have cited two FCC cases, in their separate views on the September 22, 1980 Order, directly holding that abdication of responsibility or abdication of a licensee knowledge about operations may be grounds for denying a license. And of course a history of repeated violations of agency rules is a ground for disqualification. United Broadcasting Co. v FCC cited at 12 NRC \_\_\_\_.

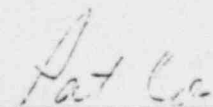
### Conclusion

Character is the single most important criteria for judging whether a license should be granted for construction or operation of a nuclear reactor. The issues of competence and character are clearly distinguished by their respective differing susceptibility to change and reform. Competence can be acquired while character cannot. Character is an abiding disposition to behave in a certain way. A decision on character is not to be confused with issues of simple non-compliance with regulatory requirements. Instances of non-compliance, which to some limited extent may normally be expected, can be corrected if regulatory procedures are routinely and willingly followed and NRC inspectors are welcomed with openness and candor while performing their function as auditors.

The issue of character arises when similar kinds of problems are repeated, routine procedures are subverted, numerous warnings and admonitions to not lead to change, and inspectors intended to assure compliance or employees properly concerned with quality and safety are met with obstruction. Remedial actions taken after non-compliance has been discovered, while relevant to the ultimate safety of a plant or even to a refurbished competence, cannot be relevant to the underlying and more enduring quality of character. Once past actions have established a disposition toward unreliability, lack of care, disregard for conformance with regulatory requirements, lack of candor and abdication of responsibilities, no amount of "remedial" action can rehabilitate that character.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "CCANP Brief on 'Character'" and "Motion for Leave to File CCANP Brief on 'Character' Out of Time" have been served by deposit in United States mail, postage prepaid on this 5 day of May, 1981, to the following:

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