

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of ( )  
HOUSTON LIGHTING AND POWER CO. ET AL ( ) Docket Nos. 50-4980L  
(South Texas Project, Units 1 & 2) ( ) 50-4990L

CITIZENS CONCERNED ABOUT NUCLEAR POWER, INC. (CCANP) RESPONSE  
TO APPLICANTS' MOTION TO QUASH SUBPOENAS FOR MS. FREDA CORTEZ  
MR. JIM TOBOLA

On July 24, 1981, during a hearing in the above-entitled matter, Applicants made an oral motion to quash the previously issued subpoenas for Ms. Freda Cortez and Mr. Jim Tobola. Both subpoenas were issued at the request of Citizens Concerned About Nuclear Power, Inc. (CCANP). The Board in these proceedings provided CCANP an opportunity to reply in writing to the Applicants' motion.

In response to Applicants' motion to quash, CCANP offers the following:

A. 10 CFR Section 2.720(f) provides for motions to quash a subpoena. The only party identified as competent to make such a motion is "the person to whom the subpoena is directed." Neither Ms. Cortez nor Mr. Tobola made such a motion. Applicants' motion is, therefore, moot as impermissible under the rules of the Nuclear Regulatory Commission.

B. Assuming arguendo that Applicants are entitled to make such a motion, CCANP responds as follows:

1. A request for a subpoena requires only a "showing of general relevance of the testimony or evidence sought." 10 CFR Section 2.720(a). A showing of general relevance appears in the transcript of the July 24, 1981 hearing at which the motion to quash was made. Among the points of relevance noted by CCANP were:

(a) the interface between management and non-management personnel at the South Texas Nuclear Project. (Tr. 7844)

(b) daily interactions between management and non-management personnel demonstrating the managerial character and technical competence of the Applicants. (Tr. 7845)

(c) Applicant abdication of responsibility to contractor. (Tr. 7847).

(d) working conditions at the South Texas Nuclear Project. (Tr. 7851).

(e) attempts by witnesses to correct various matters and management response to those corrective efforts. (Tr. 7851, 7852)

(f) unsatisfactory interface by one witness (Ms. Cortez) with a member of Applicants' quality assurance staff. (Tr. 7852)

2. Reasons (a) through (f) above are sufficient to show the relevancy of the testimony sought.



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C. Should the Board not consider the reasons set forth in B above as sufficient to deny Applicants' motion, CCANP offers the following additional reasons:

1. Almost all testimony by Applicants has been and will be the testimony of persons in management or supervisory positions. Ms. Cortez and Mr. Tobola offer the Board an opportunity to see this project from a different perspective - the perspective of someone who is not in charge but rather someone who is subject to the acts of those who are in charge.

2. The essence of the testimony of both witnesses will be the existence of poor morale at the South Texas Nuclear Project and the root causes of this poor morale. Among the root causes these witnesses can testify to are: high turnover, personnel assigned tasks for which they are not qualified, constantly changing procedures, issuance of equipment unsuitable for the task given, arbitrary acts by management, and lack of concern for worker safety.

3. A decision on the operating license is predictive in nature. In addition, Issue B in these proceedings involves a judgment on the remedial measures Applicants claim to have taken. To predict future performance and particularly to predict the weight to be given Applicants' promises of remedial action, the Board should have the broadest possible exposure to acts of Applicants and their agents and particularly exposure to how Applicants and their agents respond to situations calling for remedial actions. For example, if Applicants permitted a very dangerous condition to exist which threatened their own workers, Applicants' commitment to public health and safety may be called into question. If Applicants failed to remedy the dangerous condition despite complaints of employees, Applicants' commitment to remedy other unacceptable conditions or practices may be called into question.

D. While many objections made on July 24, 1981 to said testimony revolved around the question of safety-related versus non-safety-related work, the distinction is not as clear as it appears on its face for the following reasons:

1. Working conditions producing poor morale will have a tendency to adversely affect safety related work.

2. Non-safety related work which results in an operational failure during construction could create a safety-related problem.

3. Poor workmanship in non-safety-related areas may be predictive of poor workmanship in safety-related areas, especially when the area of work is to eventually include safety-related work. Had there been closer attention paid to concrete and welding work prior to the safety-related phases of such work, the subsequent safety related failures might have been avoided.

E. Under the Federal Rules of Evidence, the testimony sought should be allowed.

1. The testimony of Ms. Cortez and Mr. Tobola will not create an unjustifiable delay or expense as their testimony is not expected to take any lengthy amount of hearing time. Furthermore, compared to the amount of testimony presented by Applicants, the testimony of CCANP witnesses is considerably less. CCANP testimony will promote a clearer showing of the truth of the matters in contention in these proceedings.

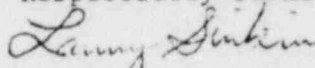
2. In determining the relevancy of the testimony sought, the test is whether such evidence will have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." (emphasis added) F.R.E. 401. CCANP clearly shows in this response that the testimony sought has at least some tendency to show the managerial character and competence of Applicants.

For the above and foregoing reasons, CCANP urges the Atomic Safety and Licensing Board in these proceedings to:

Deny the Applicants' motion to quash as impermissible under 10 CFR Section 2.720(f), or alternatively

Deny the Applicants' motion to quash based on the above showing of the relevancy of the testimony sought.

Respectfully submitted,



Lanny Sinkin  
Intervenor Representative for  
Citizens Concerned About  
Nuclear Power, Inc.

August 7, 1981

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing Citizens Concerned About Nuclear Power, Inc. (CCANP) Response to Applicants' Motion to Quash Subpoenas for Ms. Freda Cortez and Mr. Jim Tobola was sent in the United States Mail, first class postage prepaid on this 7th day of August, 1981 to the following:

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

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

Mr. Ernest E. Hill  
Lawrence Livermore Laboratory  
University of California  
P. O. Box 808, L-123  
Livermore, California 94550

William S. Jordan, III, Esq.  
Harmon & Weiss  
1725 I Street, N.W.  
Washington, D.C. 20006

Jay Gutierrez, Esq.  
Hearing Attorney  
Office of the Executive Legal Director  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Brian E. Berwick, Esq.  
Assistant Attorney General  
for the State of Texas  
P. O. Box 12548  
Capitol Station  
Austin, Texas 78711

Thomas Hudson, Esq.  
Baker and Botts  
One Shell Plaza  
Houston, Texas 77002

Jack R. Newman, Esq.  
Newman, Axelrad, Toll, & Reis  
1025 Connecticut Ave., N.W.  
Washington, D.C. 20036

Atomic Safety and Licensing  
Board Panel  
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



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