

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

April 29, 1982

In the Matter of:

HOUSTON LIGHTING & POWER CO.
(Allens Creek Nuclear Gener-
ating Station, Unit 1)

'82 MAY -3 P3:EB
Docket No. 50-466 CP *emp*

INTERVENOR DOHERTY'S FINDINGS OF FACTS ON SUPPLEMENTAL
ISSUES TO TEXPIRG ADDITIONAL CONTENTION - 31 (TECHNICAL
QUALIFICATIONS)

Introduction

On April 12 - 14, 1982, the Board in this proceeding held hearings on fifteen issues raised by this Intervenor as a result of the Quadrex Report on the South Texas Nuclear Project, a facility under construction for which Applicant is the licensee. The Board also heard testimony from both Staff and Applicant on why the Quadrex Report, since it was prepared and issued in May of 1981, had not been mentioned in the original hearings on TexPIRG Additional Contention-31, which were held October 7 - 9, 1981.

Under its discretionary power, the Board appointed this Intervenor lead party on the supplemental issues, although the issues continue termed TexPIRG Additional Contention - 31 in the record.

Findings of Fact on Supplemental Issues

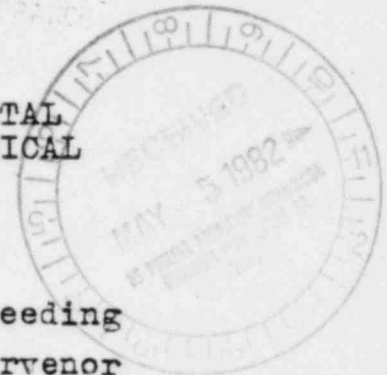
Doherty N¹/

1. Applicant's witness Goldberg, who is Vice-President, Nuclear Engineering and Construction, disagreed with Applicant's witness Sas, who is Vice President, Engineering, for Ebasco Services (Sas, Testimony, p. 1, following Tr. 21,415) on the meaning of "Spurious operation". (Tr. 21,665; Tr. 21,662)
2. Applicant's witness Goldberg is the chief executive and technical person in Applicant's organization, (Applicant's Exhibit 32, at Tr. 21,648) on nuclear matters.

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The letter (in this case "N") is taken from the Doherty Motion of December 7, 1981; this procedure employed throughout.

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3. Doherty N which specifically cited spurious operation as one of the reliability requirements for equipment that would be absent or not established at the ACNGS, is thus seen to be an issue in which the Applicant and its architect/engineer are not currently in agreement (to that extent),
4. Accordingly the Board finds that the Applicant has not met its burden of demonstrating what it would do to prevent recurrence of failure to establish reliability requirements particularly with regard to spurious operation.

Doherty A

5. Applicant's witness Goldberg testified the Systems Group is the organization responsible for there being systems integration and overview. (Tr. 21,497)
6. There are currently no persons in the Applicant's Systems Group, (Tr. 21,497)
7. Applicant's witness Goldberg testified, "We have hired a number of people that we have organized into a systems group." (Tr. 21, 496)
8. Accordingly the Board finds the record is incomplete with regard to this issue.

Doherty B

9. For consistency in design criteria Applicant will rely on its Systems group. (Tr. 21,508)
10. We are unable to determine if there is a systems group currently for the ACNGS, and request Applicant to complete the record on Doherty B, with regard to consistency of design criteria.

Doherty H

11. The systems and procedures Applicant will rely upon w. regard to the ACNGS to prevent its architect-engineer there from proceeding in its work believing it need only meet NRC regulations, "...whether or not those requirements (were) accurate, reasonable, or even (met) the intent of the regulations" are the same as those it used at the STNP prior to the Quadrex Report on STNP. (Tr. 21,625).

12. Therefore, Applicant has not met its burden to show how it will prevent recurrence of its architect-engineer treating NRC regulations and requirements in the manner described in the Quadrex Report, as alleged by Intervenor Doherty, in Doherty H.

Other findings encompassed by the Board's Orders of January 28, 1982, and April 8, 1982, which were covered at the April 12 - 14, 1982 hearings.

13. Applicant did not present its prior witness on TexPIRG - 31, George Oprea, although he was present in the hearing room on April 12, 1982.
14. Applicant's witness Goldberg testified that he had no discussions with Mr. Oprea about whether the Quadrex Report (Doherty, Marked for Exhibit 6) in any of its parts was relevant to TexPIRG -31. (Tr. 21,732 - 733)
15. Applicant's witness Goldberg testified (Tr. 21,732) that the "we" in his pre-filed testimony (P. 3, line 22, Following Tr. 21,424) meant the Applicant, and that he and Mr. Oprea had no "particular dialogue" on whether any of the Quadrex Report on STNP was relevant to TexPIRG Additional Contention - 31. (Tr. 21,732, in particular lines 9 -15).
16. There is no testimony that Witness Goldberg spoke for prior witness Oprea in the April 1982 hearings.
17. Applicant's testimony as to why its witnesses did not mention the Quadrex Report in the October 7 - 9, 1981 hearings on TexPIRG Additional Contention - 31, is entirely that of witness Goldberg. (Tr. 21,733 - 735)
18. The Board, in the Order portion of its Memorandum and Order of January 28, 1982, stated it wanted the Applicant's witnesses (vide) to explain why they did not identify what was wrong with HL&P's management and supervision at STNP that permitted these safety-related deficiencies cited in the Doherty Motion of December 7, 1981.

19. The Applicant, through witness Goldberg attempted to present pre-filed testimony that the Quadrex Report highlighted a number of concerns with nuclear engineering at the STNP site. (Applicant's witness Goldberg, p. 2, following Tr. 21,424)
 20. By failing to present Mr. Oprea, Applicant failed to obey the Board's Order of January 28, 1982, as on Page 6 of the Memorandum and Order. The Board has no explanation as to why this Witness did not appear at the hearings.
 21. Therefore, the record is incomplete with regard to a question raised by this Board, and must be completed before it can render a decision on the Construction Permit for the ACNGS.
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22. Applicant imposed a time limit of two months on the Quadrex Corp. for doing the report on STNP. (Tr. 21,683)
 23. Staff's witness Gilray opined the report was questionable on factualness because it was done hurriedly. (Tr. 22,006)
 24. Since Applicant set the time limit on Quadrex, any fault in the report due to hurrying rests on Applicant and goes to their ability to be technically competent, and weight was accorded this fact by the Board.
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25. Applicant's witness Goldberg admitted there were problems with in-service inspection engineering for the ACNGS project. (Tr. 21,711-712) The problems were lack of program management, lack of program plan and scheduling, inadequate staffing, and an unclear and inconsistent interpretation of the scope of access design review due to the absence of a program plan.

26. Applicant's witness Sas testified he had firsthand knowledge of the ISI problems, and that a personnel shortage due to urgent work at another nuclear plant made persons "unavailable to conduct the leadership for this effort".(Tr. 21,717)
 27. Applicant's witness Sas was unaware of how long the ISI problems had been going on. (Tr. 21,718, line 9) and was not certain of the date the problem was corrected. (Tr. 21,718, line 18 - 21,719)
 28. The Board finds there were problems with In-service inspection engineering of indeterminate length in the design of the ACNGS. The record is unclear if the current design retains in-service inspection deficiencies or that these were removed sometime between 1980 and the present. The Board accorded some weight to this finding.
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29. Applicant's witness Goldberg testified that he started an Engineering Assurance Division (EAD) shortly after his arrival. (Goldberg pre-filed testimony, p.4, following Tr. 21,424)
 30. Witness Goldberg further testified EAD will have six engineers, and be managed by Mr. Frazar, whose only nuclear experience is at STNP and who has no nuclear education.(Tr. 21,791, Tr. 21,440)
 31. Mr. Frazar was head of Quality Assurance, as Manager at the STNP, from "...maybe '78 or '79 through early 1982", and that program was characterized by Applicant's witness Goldberg as "In need of improvement". (Tr. 21,792)
 32. The EAD was cited by witness Goldberg as backing up the usual Project Engineering Team in case that group misses an activity of substance. (Tr. 21,494)
 33. The Board finds that the EAD while appearing to be a possible method of preventing many problems missed by a prospective ACNGS project engineering team, may be made less than effective by inexperienced management. Accordingly, the Board places little confidence in the EAD to assist in problems listed in the Doherty Items A to O.
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34. Applicant's witness Goldberg testified he did not mention the Quadrex STNP Report at the hearings of October 7-8, 1981, because "we did not consider the report to be relevant to our prior testimony." (Applicant witness Goldberg, p. 3, following Tr. 21,424) Mr. Goldberg was spokesman for the company. (Tr. 21,734)
35. No one at HL&P attempted to determine whether or not there was any relationship between TexPIRG-31 and the Quadrex STNP Report prior to the October, 1981 hearings (Tr. 21,552)
36. Therefore, by its own admission, Applicant's failure to mention the Quadrex STNP Report at the October 7 -8, 1981 hearings was not based on a determination there was no relevance between TexPIRG Additional Contention - 31, and the Quadrex STNP report items in the Doherty, December 7, 1981 Motion, because to establish relevance between two items an inquiry into the relationship between the two items is required.
37. The Quadrex STNP Report was given HL&P in May of 1981.
38. Applicant bears the full ultimate responsibility of making sure architect-engineers and other contractors perform work properly in nuclear power plant construction. (Applicant's witness Goldberg, Tr. 21,538)
39. Doherty Item K from the Motion of December 7, 1981, was taken from Section 3-1-(f) of the Quadrex STNP Report, at p. 3-7, and asserted, "...there was no procedure at STNP for assuring FSAR commitments were being implemented in the design", and TexPIRG Additional Contention -31, part C, asserted that, "...the Applicant deviated in at least three instances from the PSAR...all of which related to quality assurance...".
40. Applicant's witness Goldberg admitted there was a similar thread between TexPIRG Additional Contention - 31, part C, and Doherty Item K. (Tr. 21,554, line 7), but had maintained that lack of experience by the contractor

was definitely the reason for these failures and hence the Quadrex STNP Report item referenced in Doherty Item K was not relevant to TexPIRG 31 part C. (Tr. 21,551-20) In the October 7-8, 1981 hearings, however, Mr. Goldberg did not indicate lack of experience was the reason for failures to follow the PSAR as alleged in TexPIRG Additional Contention 31, part C. (Tr. 18,261-18,267)

41. Applicant's witness Goldberg stated that Doherty Item C from the Motion of December 7, 1981, (taken from Section 3-1-(b) of the Quadrex STNP Report, at p. 3-3) which alleges that four engineering disciplines of Applicant's architect-engineer at the STNP site did not consistently review input data for reasonableness prior to use, could have been the cause of the materials need underestimation alleged in TexPIRG Additional Contention 31, part B, by coincidence. (Tr. 21,542 line 10)
42. Witness Goldberg implied that the Doherty Item C problem could have been part of a "common thread" (Tr. 21,543 line 15) of lack of experience and hence not relevant to the assertion of TexPIRG 31 C. However, in the October, 1981 hearings, neither this witness nor Mr. Oprea of Applicant mentioned that inexperience was the cause of the TexPIRG 31 part C problem. (Tr. 18,247-255)
43. Doherty Item H (taken from Section 3-1-(d) of the Quadrex STNP Report, p. 3-6) stated, "...Applicant's architect-engineer for the STNP proceeded in its work with the belief it need only meet NRC regulations, '...whether or not those requirements are accurate, reasonable, or even meet the intent of the regulations,' and there was no planned effort to review new NRC requirements", and TexPIRG 31, part B, alleged that a 1978 internal study by the Applicant had shown Applicant had greatly underestimated materials requirements for the STNP. Applicant's witness Goldberg testified lack of experience probably prevented the then architect-engineer at STNP

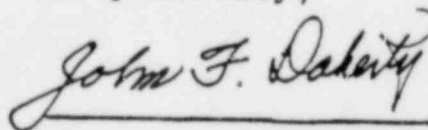
from challenging new NRC regulations. (Tr. 21,551) This was meant to explain why there was no relevance between the Quadrex Section 3-1-(d) asserted in Doherty Item H and TexPIRG Additional Contention - 31, part B, and to excuse Applicant from mentioning the Quadrex STNP Report finding in the October 7-8, 1981 portion of the hearings because it was not relevant.

44. According to its testimony Applicant deemed three Quadrex "Generic Findings" irrelevant to parts B and C of TexPIRG Additional Contention - 31, at some time prior to the October 7 - 8, 1981 hearings. By doing this, Applicant evidently removed all necessity to mention the Quadrex STNP Report in these proceedings. In each of the three instances where it made its relevancy decision, the factor of inexperience on the part of Applicant or its contractor could explain the TexPIRG cited problem. Yet, the Board finds that although the Applicant admitted TexPIRG Additional Contention 31 parts B and C were true, the Applicant's witnesses in the October 7 - 8, 1981 hearings did not testify the problems were caused by inexperience.
45. The Board finds that by not having Mr. Oprea testify, and by applying a principle that so long as any of the TexPIRG Additional Contention -31 assertions could be explained by some other mechanisms than those in the Doherty Motion of December 7, 1981, which put forth most of the Quadrex STNP Report "Generic Findings", Applicant entirely avoided presenting testimony about the Quadrex STNP Report at the October 7-8, 1981, portion of the ACNCS hearings, and obstructed the progress of this licensing Board toward its duties under the Atomic Energy Act, and Commission Regulations.

46. The record shows that by these acts of omission and commission before this licensing Board, the Applicant does not appreciate the high standard of conduct required by a licensee of the Commission. This is particularly so, where less than two years before (May 9, 1980 to October 7, 1981) Applicant had received an Order to Show Cause why safety related activities at the STNP should not be halted. (Doherty Exhibit 4, p. 30,755) This Order came from the NRC Office of Inspection and Enforcement. While Applicant appears to have hired new personnel with experience, two of its highest ranking executives participated in an attempt in the October 7-8, 1981 hearings, to not mention a major report on its STNP by applying the thinnest possible standard of "relevance".

47.. Technical competence and technical qualifications are inextricably bound to standards of proper conduct and character of those whose technical competence and technical qualifications fall under scrutiny. The Board finds the factors of proper conduct and character are lacking to such a great degree in the Applicant before us that it cannot grant a construction permit for the proposed ACNGS.

Respectfully,

A handwritten signature in cursive script, reading "John F. Doherty". The signature is written in dark ink and is positioned above a horizontal line.

John F. Doherty, J. D.

CERTIFICATE OF SERVICE

82 MAY -3 1982

I certify that copies of INTERVENOR DOHERTY'S FINDINGS OF FACTS ON SUPPLEMENTAL ISSUES TO TEXPIRG ADDITIONAL CONTENTION - 31 (TECHNICAL QUALIFICATIONS) were served on the parties below via First Class U. S. Postal Service, this 29th of April, 1982 from Houston, Texas.

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Gustave A. Linenberger Jr.
Dr. E. Leonard Cheatum

Administrative Judge
Administrative Judge
Administrative Judge

Richard A. Black, Esq.
J. Gregory Copeland, Esq. ¹/₂
Jack R. Newman, Esq.
The Several Intervening Parties
Docketing & Service Branch
Atomic Safety Licensing and
Appeal Board (ASLAB)

Staff Counsel
Applicant Counsel
Applicant Counsel

U. S. N. R. C.

U. S. N. R. C.

Respectfully,

John F. Doherty

John F. Doherty, J.D.

¹/₂ Mr. Copeland was served at the offices of Baker-Botts, 3000 One Shell Plaza, Houston, Tx., by hand delivery on April 30, 1982.