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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'82 MAY 10 P3:59

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

In the Matter of

HOUSTON LIGHTING & POWER COMPANY

(Allens Creek Nuclear Generating
Station, Unit 1

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Docket No. 50-466



APPLICANT'S RESPONSE TO INTERVENOR
DOHERTY MOTION TO ADD CONTENTION 58

I.

On April 22, 1982, Intervenor Doherty filed a motion to add an additional contention related to Applicant's alleged failure to report design defects at the South Texas Project Nuclear Plant. The contentions were divided into two parts. Contention 58(A) alleges that HL&P failed to comply with 10 C.F.R. 50.55(e) at the South Texas Project and has thereby demonstrated a lack of technical competence to construct ACNGS. Part 58(B) contends that by failing to report all of the findings of the Quadrex Report under 10 C.F.R. 50.55(e) the Applicant hindered the Board's efforts to consider the implications of the Quadrex Report in evaluating Applicant's technical competence to design and construct ACNGS.

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Mr. Doherty has styled his pleading as a motion to add additional contentions. However, the substance of the pleading clearly amounts to a motion to again reopen the record on the issue of technical qualifications. Mr. Doherty did not address the requirements for reopening the record and it is clear that he cannot possibly meet those requirements.

The standards for reopening the record have already been addressed at length in this case,^{*/} and a brief summary of those requirements should suffice here. Because of the recognized need for finality in administrative proceedings,^{**/} it is well-established that one who seeks to reopen the

^{*/} "Applicant's Brief in Opposition to the Appeal of Robert Alexander" (March 5, 1982) pp. 4-5; NRC "Staff Response to Robert Alexander's Appeal of Board Order Denying Untimely Intervention Petition" (March 5, 1982) p. 4 n.5.

^{**/} The Appeal Board has more than once noted the U.S. Supreme Court's observation in ICC v. Jersey City that

Administrative consideration of evidence . . . always creates a gap between the time the record is closed and the time the administrative version is promulgated. . . . If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.

322 U.S. 503, 514 (1944), cited in Duke Power Company (Catawaba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620-21 (1976); Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418-19 n.4 (1974).

record in an NRC proceeding on the basis of newly available information has a difficult burden to bear.^{*/} In particular, the movant must demonstrate that his motion addresses a significant environmental or safety issue^{**/} and that the outcome of the proceeding might have been different had the new information been considered initially.

The fact is, Mr. Doherty's motion is not based on any new information. Rather, he alleges that he was somehow misled by the Board and the parties as to the scope of the reopened hearings in April and, therefore, failed to recognize that these new contentions were not encompassed within the matters to be addressed at those hearings. Mr. Doherty had ample opportunity to raise contentions based on the Quadrex Report, and he failed to raise this issue at the appropriate time. On October 15, 1981, Mr. Doherty requested the Board to take additional evidence on TexPirg 31 in light of the STP Quadrex Report. On November 10, 1981, the Board withheld

^{*/} Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit No. 1), ALAB-462, 7 NRC 320, 338 (1978); Duke Power Company, 4 NRC at 619.

^{**/} Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979); Georgia Power Company (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 409 (1975); Vermont Yankee Nuclear Power Corporation (Vermont Yankee Nuclear Power Station) ALAB-138, 6 AEC 520, 523 (1973).

a final ruling on the Doherty Motion and directed this Intervenor to specify wherein the Quadrex Report indicates that HL&P is not effectively organized to properly construct the ACNGS. (Order at 2-3). Mr. Doherty's renewed motion, dated December 7, 1981, set forth his issues (A) through (O) based on the Quadrex Report, however, nowhere in his motion did he address the alleged failure of HL&P to comply with 10 C.F.R. 50.55(e). Mr. Doherty clearly failed to raise this issue several months ago when provided an opportunity to do so by the Board. He cannot possibly justify this motion by claiming the Board unduly limited the scope of his prior motion. In any event, this claim is false because the Board did not limit cross-examination on HL&P's capability to comply with 10 C.F.R. 50.55(e). The record shows that HL&P's capability to comply with 10 C.F.R. 50.55(e) was examined at length in the reopened hearings. (Tr. 21557-75; 21835-43). Thus, Mr. Doherty has an extremely heavy burden to show why the record should be reopened simply to permit further cross-examination on that same subject.

II.

Mr. Doherty has also failed to show how the information contained in his motion raises a significant new safety issue which would affect the outcome of this proceeding. He appears to argue that Applicant should have reported

every one of the Quadrex findings which were within the ranking of "most serious findings." However, Mr. Doherty fails to provide any basis for his allegation that Applicant failed to report any finding in the Quadrex Report that should have been reported under 10 C.F.R. 50.55(e). As discussed below, Mr. Doherty negates his own contention by admitting, on page 4 of the pleading, that he does not know "as a fact that the Quadrex/STNP Report gave problems which would have resulted in an adverse affect [sic] on safe operation of the STNP."

By quoting, at page 2 of his pleading, from only a portion of 10 C.F.R. 50.55(e), Mr. Doherty has misled the Board as to the requirements of Section 50.55(e). The language which Mr. Doherty did quote notes that Applicant must report design deficiencies which, if they were to remain uncorrected, could have an adverse effect on the safety of operations of the plant. Mr. Doherty failed to quote or even address the remainder of Section 50.55(e) which requires that the deficiency must also meet one of the following four conditions: "(i) A significant breakdown in any portion of the quality assurance program conducted in accordance with the requirements of Appendix B; or (ii) A significant deficiency in final design as approved and released for construction such that the design does not

conform to the criteria and bases stated in the safety analysis report or construction permit; or (iii) A significant deficiency in construction of or significant damage to a structure, system, or component which will require extensive evaluation, extensive redesign, or extensive repair to meet the criteria and bases stated in the safety analysis report or construction permit or to otherwise establish the adequacy of the structure, system, or component to perform its intended safety function; or (iv) A significant deviation from performance specifications which will require extensive evaluation, extensive redesign, or extensive repair to establish the adequacy of a structure, system, or component to meet the criteria and bases stated in the safety analysis report or construction permit or to otherwise establish the adequacy of the structure, system, or component to perform its intended safety function."

The Quadrex Report itself contains absolutely no conclusions as to whether any of the findings of the report amount to deficiencies that are reportable under Section 50.55(e). (Tr. 21562, 21573). Mr. Doherty has failed to explain which of the Quadrex findings were not reported but should have been reported because they could have an adverse effect on the safety of operations and represented one of the four conditions quoted above. In fact, Mr. Doherty

admits, as stated above, that he has no idea as to whether any of the items described in the Quadrex Report would have any adverse affect on the safe operation of the South Texas Project.*/ However, this is the very fact he must have shown in order to substantiate his allegation that HL&P has violated Section 50.55(e). In the absence of such evidence, there has been no basis shown for any allegation that HL&P failed to comply with § 50.55(e) at the South Texas Project.

III.

Mr. Doherty's alleged bases for Contention 58(B) are equally deficient. It is obvious that Contention 58(B) is contingent upon the accuracy of the allegations in his argument supporting Contention 59(A). That is, Mr. Doherty claims that by failing to report more than four of the findings from the Quadrex Report under 10 C.F.R. 50.55(e) Applicant somehow wrongfully withheld information from the NRC which it was obligated to report. As stated above, Mr. Doherty has failed to show that there were any other matters

*/ This damaging admission is made all the more fatal when contrasted to the independent review conducted by Bechtel. As the Board is aware, Bechtel's preliminary assessment found only one additional item in Quadrex that was potentially reportable under Section 50.55(e), and this item was later determined not to be reportable. (Tr. 21568-69).

that should have been reported under 10 C.F.R. 50.55(e). Absent that showing, he has failed to show how the Applicant had done anything wrong in its handling of the Quadrex Report.

In any event, it is clear that by attempting to seek the admission of this contention Mr. Doherty is doing nothing more than seeking reconsideration of the Board's prior rulings on the scope of the reopened hearings on the Quadrex matter. Indeed, Mr. Doherty admits, at page 8 of his pleading, that the Board cut off cross-examination on the "chronology" of disclosure of the Quadrex Report. Obviously, the effect of admitting the contention would be to reverse the prior ruling on this matter and Mr. Doherty has shown absolutely no reason why the Board should change its prior ruling. More particularly, he has not brought forth any new evidence of a significant safety issue which justifies reopening the record on this point.

IV.

Although Applicant does not believe that the standards for a late filed contention are controlling in this instance, it is nonetheless clear that Mr. Doherty has failed to satisfy the standards of 10 C.F.R. § 2.714. Mr. Doherty has clearly failed to provide "good cause" (10 C.F.R. § 2.714(a)(1)(i)) for the late-filed contention

The burden was on Mr. Doherty initially to specify the scope of the issues he wanted to raise when he first requested the Board to reopen hearings on the STP Quadrex Report. His failure to do so cannot possibly be good cause for a late filed contention, particularly when his only purpose is to pursue a line of cross-examination that had already been permitted. There is no reason to believe that Mr. Doherty can be expected to assist in developing a sound record (10 C.F.R. § 2.714(a)(1)(iii)) in light of his dearth of expertise in this area. The "delay" factor (10 C.F.R. § 2.714(a)(1)(v)) also weighs extremely heavily against Mr. Doherty since any additional hearings would directly affect the Board's ability to render a timely decision.

The question of whether there are other means available to protect Mr. Doherty's interest (10 C.F.R. § 2.714(a)(1)(ii)), is meaningless because the intervenors did in fact cross-examine on the subject of Contention 58(A) and the Board ruled that the subject of Contention 58(B) had no relevance to this case. For the same reason, the "representation by existing parties" standard (10 C.F.R. § 2.714(a)(iv)) has no meaning in this instance. In sum, all five factors weigh heavily against the late admission of these contentions.

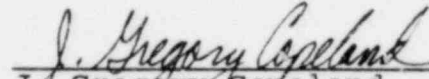
For the foregoing reasons, Applicant respectfully requests that the Board deny Mr. Doherty's motion in its entirety and proceed with an expeditious decision based on the record that is now before it.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Response to Intervenor Doherty Motion to Add Contention 58 in the above-captioned proceeding were served on the following by deposit in the United States mail, prepaid, or by hand-delivery this 7th day of May, 1982.

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