

May 14, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY & LICENSING BOARD P1:48

In the Matter of:
HOUSTON LIGHTING & POWER CO.
(Allens Creek Nuclear Generating
Station, Unit 1)

Docket No. 50-466 CP

INTERVENOR DOHERTY'S REPLY TO APPLICANT'S RESPONSE TO THE DOHERTY
MOTION TO ADD CONTENTION 58.

Introduction

On April 22, 1982, eight days after the conclusion of a three day hearing in Houston before this Board, this Intervenor filed a motion to reopen the record to hear evidence on Doherty Contention 58, "Applicant's Conduct on Reporting Violation at STNP". Applicant filed a response dated May 7, 1982 urging denial of the two two-part Contention for various reasons. As of this date, this Intervenor has received no response from Staff.

Amendments to Contention 58

Intervenor below sets forth the Contention in Amended form below:

Contention 58 A

Intervenor contends Applicant has not demonstrated it is able to comply with NRC regulations, specifically 10 CFR 50.55(e) and hence should not be granted a construction permit for the proposed ACNGS. This contention is based on Applicant's failure to report under this regulation several deficiencies found by the Quadrex Corporation in its report on design work by the Brown & Root Company at the South Texas Nuclear Project (STNP), of May, 1981. Intervenor asserts that the following deficiencies should have been reported under 10 CFR 50.55(e)(1)(i-iv):

10 CFR 50.55(e)(1)(i):

Quadrex Rept.
Item #

Description

3.1 (a)

Lack of systems integration

D303
50/1

<u>Quadrex Rept</u> <u>Item #</u>	<u>Description</u>
3.1 (b)(3)	Inconsistent review of vendor submitted reports
3.1 (c)	Lack of thorough and consistent treatment of plant operating modes and environmental conditions
4.3.2.1 (e)	No documentation for defining separation barriers
4.3.2.1 (g)	Lack of method to assure FSAR commitments go into the design
4.7.2.1 (a)	Since no modal analysis was done FSAR was incorrect

10CFR 50.55(e)(1)(ii):

4.3.2.1 (b)	No top-level document that specifies plant-wide separation requirement.
4.3.2.1 (n)	No document provides guidance on circuit application of isolation devices
4.5.2.1 (b)	Loads used as basis for plant design unverified or not reviewed
4.6.2.1 (a)	Temperature value not controlled by designers for equipment design
4.6.2.1 (b)	Insufficient environmental analysis
4.8.2.2 (m)	Different values of essential cooling pond initial temperature assumptions were used by Nuclear Analysis and Heavy Civil disciplines

10CFR50.55 (e) (1) (iii):

3.1 (d)(1)	Lack of awareness of high energy piping in the MAE and safety-related classification versus non-safety related
3.1 (d)(5)	Identified support systems and safety related vs non-safety related classification
4.1.2.1 (b)	No evidence of evaluation of reasonableness of postulated internal missiles
4.1.2.1 (c)	Turbine building not analyzed for SSE
4.3.2.1 (m)	No methodology to assure all required manual operations may be performed at remote shutdown panels

Contention 53A, as amended, cont.)

10 CFR 50.55(e)(1)(iii) cont.:

Quadrex Rept
Item #

Description

4.4.2.1(c)	Pocket hydrogen accumulations in containment after LOCA (But not the battery room)
4.6.2.1(b)	Lack of environmental analysis throughout
4.6.2.1(b)	Problems with reactor-shield wall pressurization analysis
4.8.2.2(k)	No documented basis for locating breathing connections

10 CFR 50.55(e)(1)(iv):

3.1(b)(1)	Input data to technical groups not reviewed for reasonableness prior to use
3.1(e)	No written guidelines for failure mode and effects analysis
3.1(j)(2) page 3-12	AFW pumps not qualified for postulated accident environments
4.1.2.1(f)	Pipe rupture loading may not be adequate
4.3.2.1(h)	No basis or procedure to identify support systems needed to assure safety system performance
4.3.2.1(j)	Vendors allowed to apply NRC requirements instead of architect engineer
4.4.2.1(d)	Separation requirements against common mode failures not identified
4.4.2.2(h)	No consideration of normal open doors and hatches in HVAC calculations
4.5.2.1(c)	Secondary effects of pipe rupture events have been uninvestigated
4.6.2.1(a)	Temperature values for equipment design have not been properly controlled.
4.6.2.1(e)	Use of RELAP3 for annulus pressurization analysis was inappropriate
4.6.2.1(j)	Use of double ended pipe break rather than crack break disagrees with FSAR commitment

Contention 58A, as amended, cont.)

10 CFR 50.55(e)(1)(iv) cont.:

<u>Quadrex Rent Item #</u>	<u>Description</u>
4.7.2.1(a)	No modal analysis of pipe whip was done
4.7.2.1(d)	Use of high stiffness for pipe supports gives unconservative results
4.8.2.1(d)	Shielding calculations were not safety related.
4.8.2.1(e)	No correlation of radiation zones to shielding design;

Intervenor asserts that failure to report these findings demonstrates inability to comply with NRC regulations, and that this inability would endanger the public and this Intervenor were Applicant granted the sought license.

Contention 58B

By reporting but three findings from the Quadrex Report under 10 CFR 50.55(e), by May 12, 1981 ^{1/}, and failing to report the items listed in Contention 58A (supra.) the Applicant deliberately prevented the NRC, and the Board and parties in this proceeding from learning the true significance of the Quadrex/STNP Report's findings, and their implications for judging the Applicant's technical competence, and whether the Applicant can be held to an "extraordinary responsibility for safety". ^{2/} Intervenor therefore contends Applicant lacks the character to be granted a construction permit for the proposed ACNGS.

Intervenor's Reply to Applicant's Response on Contention 58

Above, this Intervenor has replied to Applicant's objection that the Contention lacked specificity. (Applicant's Response, p.4-5, hereinafter: Response) This has been done by setting out some 37 findings from the Quadrex/STNP Report which this Party contends should have been reported under 10 CFR 50.55(e) by Applicant. This Intervenor has divided the 37 findings

^{1/} Staff Response to Intervenor Doggett's First Set of Interrogatories, Item 5, March 24, 1982, p.4.

^{2/} In the Matter of Atlantic Research Corporation, CLI 80-7, March 14, 1980; CCH 30,459, at 29,302.

by placing each of them under one of the four "represents" categories in 10 CFR 50.55(e)(1). Any of the Quadrex/STNP findings that did not fit in one of these four categories was not submitted here.

In asserting this Board should consider this Contention 58, this Intervenor is requesting the record be re-opened as it was in April of this year. Re-opening is justified for Contention 58, because Contention 58B asserts that Applicant deliberately concealed and thus prevented this Board from receiving information necessary to the adjudication of the TexPIRG Additional Contention 31, heard in October, 1981. However, the critical element or factor here in deciding if Contention 58 merits re-opening of the hearings, is not that an Intervening party might have prevailed on TexPIRG Amended Contention 31, but that by its conduct after the report of May, 1981, Applicant has created an issue of its character which is a very important consideration in granting a license because the NRC relies on licensees from much self-policing. Thus, Intervenor is saying here that Contention 58 merits admission because if this Intervenor prevails on the issue the outcome of the proceeding is highly likely to be different, that is, the license not granted. While there is, of course, no decision on the CP for ACNGS, as there was for the cases cited on p. 3 of the Response, this Intervenor believes that the issue is of such gravity that it may reverse an applicant-favoring decision as is anticipated here.

The Motion of which Contention 58 was the major part (hereinafter:Motion) was based on the information provided by Staff (See:Motion, Attachment 3), and was provided in a Staff Interrogatory reply to Intervenor Doggett, dated March 24, 1982, and received approximately two weeks before the April hearings. This provides the basis for Contention 58B. An attempt was made to use the document in the April 12 -14, 1982 hearings but failed for lack of relevance to the issues litigated there. This Intervenor asserts that its submission in the Motion is not untimely as suggested by Applicant in its Response, because

of its late availability as described. And, even though the "Chronology" in the Motion Attachment 3 agrees greatly with one obtained from Mr. Sinkin (See: this Intervenor's Motion of March 29, 1982 for the Board to subpoena Mr. Sells of the NRC Staff where it was attached) who represents an Intervenor in the South Texas hearings (50-498), it alone would not have provided sufficient basis for the matter of holding back or otherwise downplaying the Quadrex/STNP Report as alleged in Contention 58B. The Sinkin paper is uncorroborated by an investigation, unlike the basis for Contention 58B, a Staff Memorandum to one of its Commissioners.

While Applicant has asserted (Response, p. 2) the need for finality to these proceedings, this is not sufficient balanced against a well based contention that Applicant attempted to downplay or otherwise keep the Quadrex/STNP from the awareness of this Board and parties. It would be unseemly for this Board to follow Applicant's suggestion and declare it won't hear this issue because the Applicant needs a decision too soon for a hearing. This is because the Applicant by downplaying the report or concealing it has delayed persons such as this Intervenor from raising the issue in a timely manner. This Intervenor had no other firm basis than the Staff chronology on which to base his April 22, 1982 Motion. Any complaints that this Intervenor slept on his rights thus are groundless when the facts peculiar to this proceeding are examined.

Singling out Contention 58A, for a moment, the issue of not filing findings from the Quadrex/STNP Report under 10 CFR 50.55(e)(1)(i-iv) to the NRC never had an appropriate time in the April hearing, because the Board judged this "marginally relevant" to the April 1982 topics. Contrary to Applicant's implications (Response, p.4) the Board Order of November 10, 1981, did not invite issues from a broad scope. In that Order, at p. 2-3) the Board required this Intervenor to specify contents of the Quadrex/STNP Report which indicate that organizational changes ought to be made

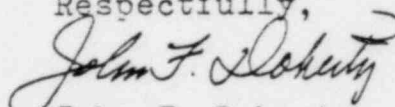
insofar as the ACNCS is concerned and indicate what modifications should be made which were not adequately addressed in the October 1981 hearings. It is facially obvious the Board Order did not countenance an issue of report concealment or other downplaying as in Contention 58B. It is arguable the Board also did not countenance an issue on reporting of deficiencies, as now raised in Contention 58A, from that same Order.

At p. 5 and 7 of its Response, Applicant has made much of a statement by this Intervenor that he doesn't know for a fact that the Quadrex Report gave problems reportable under 10 CFR 50.55(e)(1), (Motion, p. 4). The statement was meant to clarify that there were no new documents or reports which showed that for a fact there were problems other than those reported. The statement was meant to emphasize that there is no factual requirement that the finding meet the standard of 10 CFR 50.55(e), and hence this Intervenor, like every one else possessed no special knowledge to make such a decision, and was not asserting such by raising the issue in Contention 58.

With regard to timeliness, the Applicant has based its belief the filing is untimely on the merits of the Contention itself. Above, this Intervenor has shown that the issue is intrinsically very significant, particularly in part B, which raises Applicant's character to be a licensee into question, based on a recently obtained NRC memorandum. It should be pointed out that the Board never ruled that the subject of Contention 58B had no relevance to this case, (Response, p.9) but none to the issues before it in April, 1982. Hence, the means available for this Intervenor to have protected his interests other than through a hearing are not present, contrary to Applicant's claim. (Response, p.9) Above, this Intervenor has pointed out why the delay factor (10 CFR 2.714(a)(1)(v)) should not be significant, in fairness to this Intervenor. In legal terms, the Applicant is estopped to raise the delay factor for an issue where it is the source of the delay itself, since it had the only copies of the report for many months when these issues could have been dealt with.

Therefore, with the minor amendments, which specify what issues this Intervenor believes should have been brought forward from the Quadrex/STNP Report, and clarifies the impli-

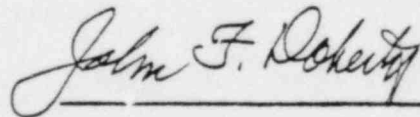
cations of Contention 58B, this Intervenor believes he has replied to all major objections raised by Applicant in its Response. This Intervenor believes it is appropriate for this Board to judge the conduct of Applicant in these proceedings even though a different tribunal may be weighing a similar question in another licensing hearing. Otherwise, this Intervenor will not obtain his full right to inquire into the conduct of Applicant toward the NRC with regard to the Quadrex/STNP report.

Respectfully,

John F. Doherty,
Intervenor pro se

CERTIFICATE OF SERVICE

Copies of the above, "INTERVENOR DOHERTY'S REPLY TO APPLICANT'S RESPONSE TO THE DOHERTY MOTION TO ADD CONTENTION 58" were served on the parties below, via First Class U. S. Postal Service from Houston, Texas, this 4th of May, 1982.

Sheldon J. Wolfe, Esq.	Administrative Judge
Gustave A. Linenberger	Administrative Judge
Dr. E. Leonard Cheatum	Administrative Judge
Richard A. Black, Esq.	Staff Counsel
Jack R. Newman, Esq.	Applicant Counsel
J. Gregory Copeland, Esq.	Applicant Counsel
Docketing & Service Branch	USNRC
The Several Intervening Parties	
Atomic Safety Licensing and Appeal Board (ASLAB)	



John F. Doherty