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April 20, 1982

ROBERT LOWENSTEIN
OF COUNSEL

Chairman Nunzio J. Palladino
Commissioner John F. Ahearne
Commissioner Victor Gilinsky
Commissioner Thomas M. Roberts
United States Nuclear Regulatory
Commission
Washington, D. C. 20555



Re: Review of Appeal Board's Order of April 15, 1982
In the Matter of Houston Lighting and Power Company, et al.
(South Texas Project Units 1 and 2)
Docket Nos. STN 50-498 OL; STN 50-499 OL

Dear Members of the Commission:

On April 15, 1982, the Appeal Board issued an order in this proceeding directing that "another member of the Licensing Board Panel should be now designated to replace Judge Hill." (Order, p. 2). That Order reversed a decision reached by the other two members of the Licensing Board, who, in a Memorandum and Order dated April 13, 1982, had found a motion filed by one of the intervenors requesting Judge Hill to recuse himself "totally to lack merit." (Memorandum and Order, p. 2).

The Appeal Board issued its Order on April 15 because the next hearing session was scheduled for April 20. It stated that its opinion would be issued at a later date.

The immediate effect of the Appeal Board's Order was that, in a conference call on April 16, the two remaining members of the Licensing Board cancelled the hearing session scheduled for April 20-24, notwithstanding the strong urging of Houston Lighting and Power Company, et al. (Applicants) and the NRC Staff that they proceed under the quorum rule.

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Under normal circumstances, the Applicants would not decide whether to file a Petition for Review under 10 CFR § 2.786(b) or request any other Commission action until they had an opportunity to review the forthcoming opinion of the Appeal Board setting forth its reasoning for the disqualification of Judge Hill.

However, in the view of the Applicants the issues of law and policy raised by the Appeal Board's action are so significant that they merit review and ultimate determination by the Commission itself, regardless of how persuasive the Appeal Board's opinion proves to be. Accordingly, Applicants have prepared the enclosed Petition for Review which, of course, in the absence of the Appeal Board's opinion is intended principally to alert the Commission that there are matters deserving of its attention. Applicants would urge the Commission to avoid unnecessary procedural delays by determining that these matters do warrant its review either on the Commission's own motion under 10 CFR § 2.786(a) or in response to Applicants' Petition.

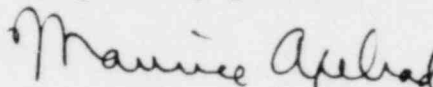
Moreover, it is apparent to Applicants that the complex and still evolving situation involving the Appeal Board, the remaining two members of the Licensing Board, and the Chairman of the Atomic Safety and Licensing Board Panel (who has to decide whether and when to appoint a replacement for Judge Hill) require that the Commission step in to provide the guidance and direction necessary to assure that these matters are resolved promptly and that no further unnecessary delays occur. Applicants are therefore also filing the enclosed "Motion for Actions by the Commission in Light of Appeal Board's Order of April 15, 1982."

Since it is unclear at this point whether the Licensing Board plans to proceed with the next hearing session (May 4-7), Applicants believe it is particularly important that the Commission express to the Board its direction that the hearings should continue under the quorum rule while the status of Judge Hill remains under consideration. As described in the enclosed Motion, since the issues in this phase of the proceeding relate to the competence and character of HL&P it is vitally important to the Company that they not remain undecided for a protracted period, and there is every reason for the hearings to continue. Moreover, these are the very issues which the Commission itself mandated be considered on an expedited basis in CLI-80-32, 12 NRC 281 (1980).

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The Motion also requests that an expedited briefing schedule be established, that the Appeal Board's opinion be served on an expedited basis, and that a new member not be appointed to the Board while the Commission considers these matters.

Very truly yours,


Maurice Axelrad

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through the City Public Service Board of
the City of San Antonio, CENTRAL POWER
AND LIGHT COMPANY and CITY OF AUSTIN,
TEXAS.

Enclosures

cc: Certificate of Service