

6/28/82

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
HOUSTON LIGHTING & POWER COMPANY ) Docket No. 50-466  
 )  
(Allens Creek Nuclear Generating )  
Station, Unit 1) )

APPLICANT'S RESPONSE TO DOHERTY'S MOTION  
TO REOPEN THE RECORD

Mr. Doherty has filed a third request, dated June 15, 1982, for the Board to reopen the record in this proceeding to hear his two-part contention on the Applicant's alleged failure to comply with 10 CFR § 50.55(e) at South Texas.<sup>\*/</sup> In a Memorandum and Order dated June 2, 1982, the Board denied Mr. Doherty's first such request and refused to consider his second. For the reasons discussed below,

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<sup>\*/</sup> Mr. Doherty has filed both a Motion to Reopen and a separate document entitled "Intervenor Doherty's Contention 59." It is apparently his belief that if his pleading is not styled as a "motion," he has a right to reply to responses by the other parties under the Appeal Board's ruling in this proceeding in ALAB-565. However, ALAB-565, which discusses the rights of petitioning parties to orally support their petitions at the intervention stage of a proceeding, obviously has no relevance to a motion to admit a late-filed contention after the record has been closed. As the Board recognized in its June 2, 1982, Memorandum and Order, Mr. Doherty's request is a motion to reopen the record no matter what words appear on the heading, and the rules do not afford him a right of reply.

Applicant believes that Mr. Doherty's latest filing is both improper and insufficient to support the relief requested. Applicant therefore urges the Board to deny, once again, Mr. Doherty's motion.

Mr. Doherty's filing, in large part, reiterates his May 24, 1982, "Reply" which was stricken by the Board as impermissible under 10 C.F.R. § 2.730(c). In Applicant's view, the Commission's rules, which prevent moving parties from filing replies except with leave of the Board, may not be circumvented by simply refiling the same argument after the Board has issued its ruling. For this reason alone, Mr. Doherty's effort to obtain consideration of his improper filing should be summarily rejected.

In any event, Mr. Doherty's latest filing fails to remedy fundamental deficiencies in his earlier unsuccessful effort to have this contention admitted by the Board.<sup>\*/</sup> In particular, while Mr. Doherty has now listed his own paraphrased interpretations of certain Quadrex findings which he alleges to be reportable under § 50.55(e), he has not even attempted to explain why he believes these items constitute

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<sup>\*/</sup> The Applicant set forth in detail the reasons why the Board should reject this late-filed contention in its May 7, 1982, "Response to Intervenor Doherty's Motion to Add Contention 58." Applicant asks that its earlier filing be incorporated herein and considered by the Board.

§ 50.55(e) violations. The listed items are categorized under the subparts of § 50.55(e), but Mr. Doherty has not provided any basis for his chosen categorizations nor any analysis of the listed "findings" under the standards set forth in § 50.55(e). As Applicant explained previously, the Quadrex Report itself makes no judgments as to whether any of its findings constituted reportable deficiencies. Moreover, HL&P's determinations as to what matters should have been reported are supported by the preliminary assessment of the Quadrex Report conducted by the Bechtel Corporation. (Tr. 21568-69). Thus, the alleged basis for Mr. Doherty's new contention remains without support.

Mr. Doherty has also again failed to provide a reasonable explanation for his failure to timely raise this issue when the Board granted him an opportunity to do so late last year. In addition to his prior argument, rejected by the Board, that he thought he would be able to raise these matters at the April reopened hearings, Mr. Doherty now alleges that the Board's November 10, 1981, Order did not permit him to raise this Quadrex-related issue. In fact, Mr. Doherty was directed at that time to raise everything in the Quadrex Report which in his view demonstrated that HL&P does not have the organization and competence to adequately construct the ACNGS. It is a simple fact that Mr. Doherty's Contention 59 was not raised when he submitted

his issues (A) through (O) based on the Quadrex Report.  
His new contention is therefore extremely tardy.

Finally, Mr. Doherty has provided no new grounds for altering the Board's recent Order reaffirming its conclusion that Contention 59(b) is only marginally relevant to this proceeding, and does not justify reopening the record.

Mr. Doherty's motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Response To Doherty's Motion To Reopen The Record in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid this 28th day of June, 1982.

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