

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD '83 AUG 17 A10:39

In the Matter of)
)
HOUSTON LIGHTING & POWER) Docket Nos. 50-498 OL
COMPANY, ET AL.) 50-499 OL
)
(South Texas Project, Units 1)
and 2))

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Applicants' Response to CCANP
Motion for Reconsideration of
ASLB Ruling of July 14, 1983
on CCANP Motion for New
Contention

I. Introduction

By motion dated July 29, 1983,*/ Citizens Concerned About Nuclear Power (CCANP) has requested that the Atomic Safety and Licensing Board (Board) reconsider its decision denying CCANP's motion for admission of a new contention addressing HL&P's financial qualifications.**/ CCANP's Motion fails to provide any justification for the Board to reconsider its prior denial of CCANP's original motion. For the reasons set forth below, CCANP's Motion should be denied.

II. Argument

In order to warrant reconsideration of a Board determination, a movant must do more than merely repeat arguments it

*/ CCANP Motion for Reconsideration of ASLB Ruling of July 14, 1983 on CCANP Motion for New Contention (July 29, 1983), (Motion).

**/ Memorandum and Order (Denying Motion for New Contention), (July 14, 1983), (Memorandum and Order). The rationale

(footnote cont'd)

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previously presented. In Nuclear Engineering Co. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), CLI-80-1, 1 NRC 1,5 (1980), the Commission denied a motion for reconsideration, concluding that the motion "present[ed] no basis for our reconsideration of arguments made to and considered by us in reaching our initial decision." (emphasis added) The Commission set forth a similar holding in Wisconsin Electric Power Co. (Point Beach Nuclear Plant, Unit No. 2), 4 AEC 678-79 (1971). Unless a motion for reconsideration alerts the Board to facts which it may have overlooked or not fully appreciated, such a motion may be no more than "an idle exercise." Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant, Unit 1), ALAB-169, 6 AEC 1157, 1158 n.2. CCANP's Motion does little more than reiterate arguments it has made in prior pleadings. Where the Motion does address matters not explicitly addressed in CCANP's prior pleadings, it nevertheless fails to provide a sufficient basis for reconsideration of the Board's decision denying the motion for admission of a new contention.

The first basis upon which CCANP requests reconsideration is the action of the Texas Public Utility Commission (PUC) in HL&P's recent rate case. CCANP argues that the PUC did not

(footnote cont'd)

the Board utilized in its Memorandum and Order is consistent with a recent Commission opinion affirming the denial of a 10 CFR §2.206 petition which sought to shut down the Maine Yankee facility on the basis of financial considerations. Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), CLI-83-____, ____ NRC ____ (August 2, 1983).

consider HL&P's safety obligations, and may not be legally obligated to authorize a rate of return sufficient to meet those obligations. CCANP states that the PUC is not bound to authorize sufficient revenue for a utility to meet all of its duties if the utility has been mismanaged. Motion at 1-6. With the exception of CCANP's legal views regarding PUC authority and obligations, and the effect of those obligations on HL&P's financial qualifications, CCANP merely restates its previous arguments regarding the alleged adverse consequences of the December 6, 1982 PUC Order on HL&P's financial qualifications. Those arguments were set forth in both CCANP's original motion^{*/} and its subsequent supplemental pleading.^{**/} Because a movant must do more than merely repeat previously presented arguments, CCANP's reiteration of these arguments fails to support its request for reconsideration.

CCANP's discussion of the legal precedents addressing PUC authority also fails to provide a sufficient basis for reconsideration. Whether or not under the applicable precedents a PUC may deny a utility sufficient sources of revenue to meet its safety obligation does not comprise the "special circumstances [regarding] the particular proceeding," which would warrant an exception to the NRC's financial qualifications

^{*/} CCANP Motion for New Contention (March 18, 1983) at 4, 6-8.

^{**/} CCANP Supplement to March 18, 1983 Motion for New Contention (May 30, 1983) at 4.

regulations in this proceeding. 10 CFR § 2.758(b). CCANP itself recognizes that "the presumption [of adequate rate relief] underlies the Commission's [financial qualifications] rule." Motion at 3. In addition, CCANP has previously stated that it "wishe[d] to make clear in the record that CCANP objects to the rule itself." CCANP Supplement to March 18, 1983 Motion for New Contention at 1-2. Thus, when CCANP challenges this aspect of the Board's Memorandum and Order, it challenges the efficacy of the Commission's financial qualifications regulations themselves.

The specific effect of the PUC's decision in the South Texas Project (STP) rate case, including the allegations of mismanagement and the PUC's actions in response thereto, were explicitly considered by the Board. "[N]o indication that the Texas PUC is not taking into account HL&P's revenue requirements for successfully meeting the obligations of its NRC licenses" was detected. Memorandum and Order at 10. CCANP has failed to provide any new information regarding the PUC decision. Thus, nothing in CCANP's Motion warrants reconsideration of the Board's conclusion. Because CCANP's argument fails to set forth any "special circumstances" involving the STP, its concerns would be more appropriately addressed in a petition for rulemaking requesting the NRC to amend its financial qualifications regulations, rather than

in a motion to reconsider the Board's prior holding in this particular case.*/

CCANP next reiterates its assertions that the litigation between HL&P and the City of Austin may impose an onerous burden on HL&P. Motion at 6-7. These assertions merely rehash prior CCANP arguments and clearly do not warrant Board reconsideration.**/

Furthermore, CCANP's arguments on this point continue to focus on construction-related costs. As was clearly recognized by the Board, an applicant's "financial qualifications to 'construct' a facility is not -- and was not prior to the 1982 amendment to the rule governing consideration of an applicant's financial qualifications -- a subject open to

*/ Although CCANP criticizes the Board's failure to delineate a precise line regarding when a waiver of the financial qualifications regulations pursuant to 10 CFR § 2.758(b) would be justified, the test suggested by CCANP is illogical and without support. CCANP argues that where a PUC merely disagrees with a utility regarding the appropriate rate of return, no waiver of the financial qualifications regulations would be justified. On the other hand, where a PUC reduces a rate request on the basis of utility mismanagement, CCANP believes that a waiver should be granted. Motion at 6. However, whether HL&P's authorized rate of return was reduced to 16.35% of common equity based on mere disagreement over the appropriate rate of return, or alleged mismanagement, identical resources would still be available to the Company. Thus, CCANP's proposed test creates a distinction where no difference, in terms of actual financial qualifications, exists. Furthermore, CCANP's proposed test focuses upon a utility's authorized rate of return on common equity which, for rate-making purposes, is unrelated to its ability to recover operating expenses associated with nuclear or other generating facilities.

**/ See CCANP Motion for New Contention at 9.

consideration at the operating license stage." Memorandum and Order at 3. Thus, CCANP's allegations regarding the Austin litigation provide no basis for the Board to reconsider its prior ruling.*/

Finally, CCANP reiterates a number of "[s]peculative" concerns including "the national climate for nuclear investment" which has "deteriorated significantly since the Commission adopted the [financial qualifications] rule"; anticipated PUC treatment of potential litigation losses suffered by HL&P; the effect of financial pressures on HL&P's future safety record; and the alleged inadequacy of NRC inspection efforts. Motion at 7-10.

All of these concerns have been previously raised by CCANP and considered by the Board, and CCANP's Motion provides no new insights warranting reconsideration of the Board's decision. CCANP's argument regarding the national climate for nuclear investment (Motion at 7-8) was previously raised in its original motion and its supplemental pleading,**/ and would be more appropriately addressed in a petition to amend the NRC's financial qualifications regulations. This

*/ - CCANP also indicates that conversations with legal counsel for the City of Austin, lead it to believe that "HL&P will go into receivership rather than permit the Austin law suit to go to trial." Motion at 7. Applicants' counsel have been informed by Austin's attorneys that they are unaware of any conversation or statement which would have given CCANP the stated impression.

**/ CCANP Motion for New Contention at 5; CCANP Supplement to March 18, 1983 Motion for New Contention at 4.

argument also addresses construction funding, an issue expressly rejected for consideration by the Board.

Furthermore, to the extent CCANP's Motion sets forth new allegations regarding the municipal bond market and its effect on the financial qualifications of the Cities of Austin and San Antonio, it exceeds the scope of the proposed contention, which addressed only HL&P's financial qualifications. CCANP Motion for New Contention at 2.

CCANP's allegations regarding anticipated PUC treatment of potential litigation losses were previously addressed in CCANP's original motion,^{*}/ and are entirely speculative. CCANP's discussion of HL&P's safety record merely rehashes prior arguments.^{**}/ Finally, CCANP fails to provide any new information regarding NRC inspection efforts that would warrant reconsideration of the Board's decision.^{***}/ Allegations related to NRC inspection efforts at the Comanche Peak facility cannot possibly give rise to the "special circumstances" warranting a waiver of the financial qualifications regulations in this proceeding. Thus, such allegations

^{*}/ CCANP Motion for New Contention at 7, 9.

^{**}/ Id. at 10-11.

^{***}/ Id. at 12.

do not warrant reconsideration of the Board's decision.*/
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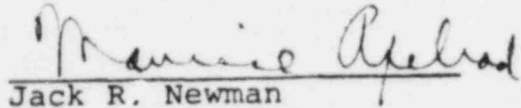
III. Conclusion

CCANP argues that the Board should reconsider its prior decision denying admission of CCANP's proposed financial qualifications contention. For the most part, however, its Motion does no more than rehash prior arguments regarding the alleged implications of PUC actions, the litigation between HL&P and the City of Austin, and other speculative matters. In those few instances where CCANP has elaborated on its prior arguments, it has failed to provide any information demonstrating the "special circumstances" needed for a

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_ CCANP has also requested that the Licensing Board certify its motion to the Commission. Motion at 10. If CCANP is requesting certification pursuant to the waiver provisions of 10 CFR § 2.758, Applicants' Response demonstrates that no "special circumstances" warranting certification have been identified by CCANP. If, on the other hand, CCANP seeks certification or referral pursuant to 10 CFR §§ 2.718(i) or 2.730(f), regardless of the Board's conclusion regarding its Motion, it has failed to even attempt to make the requisite showing. While a party may request a Licensing Board to certify a question or refer a ruling to the Appeal Board, rather than the Commission, it is essential that the party establish that a prompt Appeal Board decision is necessary to prevent detriment to the public interest or unusual delay or expense. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 482-83 (1975).

waiver of NRC regulations in this particular case. Accordingly, CCANP's Motion should be denied.

Respectfully submitted,



Jack R. Newman
Maurice Axelrad
Alvin H. Gutterman
Donald J. Silverman
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Finis E. Cowan
3000 One Shell Plaza
Houston, Texas 77002

Dated: August 15, 1983

LOWENSTEIN, NEWMAN, REIS
& AXELRAD, P.C.
1025 Connecticut Avenue,
N.W.
Washington, D.C. 20036

BAKER & BOTTS
3000 One Shell Plaza
Houston, Texas 77002

ATTORNEYS FOR HOUSTON LIGHTING
& POWER COMPANY, Project Manager
of the South Texas Project acting
herein on behalf of itself and
the other Applicants, THE CITY OF
SAN ANTONIO, TEXAS, acting by and
through the City Public Service
Board of the City of San Antonio,
CENTRAL POWER AND LIGHT COMPANY,
and CITY OF AUSTIN, TEXAS

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to CCANP Motion for Reconsideration of ASLB Ruling of July 14, 1983 on CCANP Motion for New Contention" have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid, on this 15th day of August, 1983.

Charles Bechhoefer, Esq.
Chairman, Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. James C. Lamb, III
Administrative Judge
313 Woodhaven Road
Chapel Hill, NC 27514

Ernest E. Hill
Administrative Judge
Lawrence Livermore Laboratory
University of California
P.O. Box 808, L-46
Livermore, CA 94550

Mrs. Peggy Buchorn
Executive Director
Citizens for Equitable
Utilities, Inc.
Route 1, Box 1684
Brazoria, TX 77422

Brian Berwick, Esq.
Assistant Attorney General
for the State of Texas
Environmental Protection
Division
P.O. Box 12548, Capitol Station
Austin, TX 78711

William S. Jordan, III, Esq.
Harmon & Weiss
1725 I Street, N.W.
Washington, D.C. 20006

Kim Eastman, Co-coordinator
Barbara A. Miller
Pat Coy
Citizens Concerned About
Nuclear Power
5106 Casa Oro
San Antonio, TX 78233

Lanny Sinkin
2207-D Nueces
Austin, TX 78705

Robert G. Perlis, Esq.
Office of the Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Appeal
Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

David J. Silverman