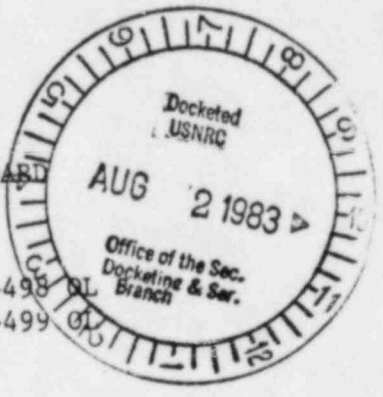
UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CCANP MOTION FOR RECONSIDERATION
OF ASLB RULING OF JULY 14, 1983
ON CCANP MOTION FOR NEW CONTENTION

I. Introduction

On July 14, 1983, the Atomic Safety and Licensing Board in this proceeding issued a Memorandum and Order refusing to certify to the Commission CCANP's motion for a new contention which sought a waiver of the Commission's rule on financial qualifications in order to permit inquiry into the financial qualifications of the Applicants.

The Board based its decision on the failure of CCANP to make a prima facie showing that the application of the Commission's rule eliminating financial qualifications review for certain electric utilities would not serve the purpose for which the rule was adopted. Memorandum and Order at 9-11.

For reasons stated hereinafter, CCANP contends that this decision was made in error and moves that the Board reconsider the motion.

II. Discussion

A. Basis for the Rule Change

The Staff asserts that the NRC changed the financial qualifications review rule because it found no general relationship between financial qualifications and safety. Contrary to the Staff's position, the Commission found the general proposition that financial qualifications can affect safety to be "unexceptionable." Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), 7 NRC 1, 18 (1978).

Although the Commission found this proposition to be generally valid, it also found that, in the case of a regulated electric utility, the relationship between safety and financial qualifications review is "less compelling." Id. The Commission cited three factors in support

of its finding: the regulated status of electric utilities, the utilities' self interest in safety, and the NRC's ongoing inspection efforts. Id. at 18-19. Based on these factors, the NRC distinguished electric utilities from the general rule; it did not reject the general rule that financial difficulties can affect safety.

Of the three factors cited, the regulated status of electric utilities was the primary basis of the Commission's finding. The rule change was limited to applicants which are regulated utilities or utilities which can set their own rates. Historically, this class of applicants has been able to make reasonable assurances that they can obtain the funds necessary to carry out their license obligations. Id. note 10. As a result, the Commission found that extensive inquiry into their financial qualifications revealed no significant new information and was therefore unnecessary.

The Commission did not find that the self interest in safety and NRC inspections common to all applicants would prevent financial pressure from affecting safety. Instead, it found that the financial pressures utility applicants foreseeably experience would not be great enough to affect safety. Had the Commission found otherwise, there would be no logical basis for limiting the exception from financial qualifications review to electric utilities; if there was no connection, there would be no need for financial qualifications review of non-regulated utility applicants.

As the Atomic Safety and Licensing Board pointed out, the basis of the Commission's findings is the "duty of state regulatory bodies to approve such rates as are necessary to enable a regulated utility to fulfill obligations imposed on it by the nuclear facility licenses." Memorandum and Order at 9. The Commission recognized this duty in the comment to the rule change when it was proposed, 46 Fed. Reg. 41788 and cited the two United States Supreme Court decisions which form the basis of modern rate regulation: Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944) and Bluefield Water Works and Improvement Co. v. Public Service Comm' of the State of West Virginia, 269 U.S. 679 (1923).

However, the principle established in these cases does not

impose an absolute duty on regulatory bodies to enable utilities to fulfill all of their obligations. According to these cases, the return allowed a public utility should be "adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties." Bluefield at 693 (emphasis added). Otherwise, the rate is an unconstitutional taking of property without just compensation. Id. at 690.

Under this standard, a utility will only meet its obligations if it is efficiently managed. Wasted expenditures do not contribute to the used and useful value of the utility's equipment and are, therefore, not properly included in its rate base. F.P.C. v. Natural Gas Pipeline Co., 315 U.S. 390. As a result, a reasonable rate may cause a poorly managed utility to operate without any net revenue. Hope at 603. As a matter of constitutional law, it is permissible to set a rate which will not permit a utility to fulfill its obligations if the utility is poorly run.

Thus the presumption that underlies the Commission's rule change - that regulated utilities will generally be able to meet their licensing obligations - is based on the duty of state regulatory bodies to provide such utilities adequate rate relief. To the extent that a utility is mismanaged, no constitutional duty to provide that relief exists. Therefore, the rule exempting electric utilities from financial qualifications review fails of its essential purpose when the electric utility involved is mismanaged and the mismanagement is of such a degree that it produces financial reversals which in turn cast doubt on the utility's ability to fulfill its safety obligations.

B. Burden of Proof Necessary to Make a Prima Facie Case

10 C.F.R. Section 2.758 requires the party seeking a waiver of a rule to make a prima facie case that the rule will fail of its essential purpose. This rule eliminated litigation of financial qualifications for applicants whose ability to meet the reasonable assurance standard is substantially unquestioned.

To make a prima facie case that the rule fails of its essential purpose, it must be shown that the applicants' ability to make that

showing is not substantially certain.

The party seeking a waiver need not prove that the applicant cannot meet the reasonable assurance standard; that is a question for the hearing on the merits and the burden of proof is on the applicants. 10 C.F.R. Section 2.732. Since the rule was predicated on the absence of a substantial question, documentation of a substantial question constitutes a prima facie showing that the rule fails of its essential purpose.

C. The Facts of This Case

1. Actions of the Public Utility Commission of Texas

In its Memorandum and Order at 10, the Board states:

> "Having reviewed the PUC Order, together with the portions of the hearing examiner's report and PUC Commissioner's comments which CCANP provided us, we find no indication that the Texas PUC is not taking into account HL&P's revenue requirements for successfully meeting the obligations of its NRC licenses."

There is no indication, however, that the PUC is taking into account "HL&P's revenue requirements for successfully meeting the obligations of the NRC licenses." The PUC rate cases do not include any specific information on how much the utility needs to meet NRC licensing obligations. The PUC does not consider the safety aspects of construction as a basis for deciding a rate request. In fact, the PUC is preempted by federal law from involving itself in the safety questions of construction or operation of a nuclear power plant.

There is no indication that the PUC considers NRC licensing requirements in setting the penalties for HL&P nor that they ever would. Nor is there any law which would provide the NRC enforcement powers over a PUC that refused to allow a rate of return which the NRC considered essential to the safe operation of a nuclear plant; the NRC would only have the authority to order the plant shut down for lack of adequate funds to safely operate.

The Commission could never have intended for state regulatory bodies to argue with utilities over how much money the utility needed to safely operate a nuclear plant; the question is simply beyond the purview of the PUC.

In its Memorandum and Order at 11, the Board states:

> "When NRC changed its rules, it could not have contemplated that any utility covered thereby would never have financial

difficulties or that a State would ever deny a utility some of the return it is seeking."

But the Commission explicitly provided for a waiver; the Commission must have considered that there could be a point at which the financial difficulties or State regulatory action would create a significant problem warranting inquiry.

This interpretation by the ASLB proves too much. It offers no guidance on where the line is drawn regarding justification for a waiver; in fact, the ASLB seems to suggest that because the Commission assumed the possibility of financial difficulties or a reduced rate of return, any financial difficulties or reduction, no matter how severe, were also considered.

At some point, the financial difficulties or amount of return allowed should justify a waiver. The ruling by the Board leaves no room for such a waiver.

When applied to this particular case, the Board's interpretation is demonstrably too sweeping in its scope. The Public Utility Commission did not merely differ with HL&P over the amount of a reasonable return. The Commission found that 16.85% return on common equity would be reasonable. Then the Commission penalized HL&P for poor management by reducing the allowable return to 16.35%. See CCANP's Motion for New Contention, Exhibit 1, page 2. In addition, the PUC found that $166 million dollars were spent imprudently on the Allen's Creek Nuclear Project, disallowed amortization of that amount, and ordered all tax savings associated with writing off the loss passed on to the ratepayers. Id. at 5. As a result the actual return on common equity for 1982 was 6.8%, even though the Commission found 16.85% to be reasonable. Houston Industries Annual Report at 38. There is clearly a prima facie case that, for 1982 at least, HL&P has less money than it said it needed and less than the PUC agreed was reasonable and necessary absent mismanagement.

In addition, the Commission indicated that HL&P's expenditures on STNP would be carefully scrutinized, that imprudent expenditures would not be included in HL&P's rate base.

Based on conversations with an expert in the economics of nuclear power plants, CCANP believes that as much as $700 million will eventually prove to have been wasted on this project prior to 1982.

Given that the plant is 7-8 years behind schedule, is expected to cost 6-7 times the original estimate, and has a record of incompetence on the part of both the Applicants and their prime contractor, such a figure is not unlikely. HL&P's share of this waste as a percentage of ownership would be roughly $200 million. The question remains open whether HL&P will be responsible only for its percentage or, as managing partner, for the entire amount.

For HL&P to pay back such an amount or have its future return reduced by such an amount will again place HL&P in a position where its return is less than requested and less than the PUC would find reasonable and necessary absent mismanagement.

What CCANP is suggesting in its motion for a new contention and request for rule waiver is that there is a line between rate request reductions which are merely differences between the regulator and the utility as to what constitutes a reasonable and necessary return and rate request reductions resulting from mismanagement, imprudence, or other non-financial considerations which reduce the return below what the regulator would have otherwise considered reasonable and necessary.

In the former type of case, reduction would not be cause for a waiver of the financial qualifications review rule. The latter type of reduction would lead to consideration of a waiver with the potential size of the penalty a key factor in deciding whether a waiver would be granted.

In the instant case, HL&P liability for mismanagement alone could run to hundreds of millions of dollars in reduced return.

2. The Austin Law Suit

In its Memorandum and Order at 11, the Board states:

> "even were Austin to succeed [in its litigation against HL&P], we have not been shown that HL&P would be so adversely affected that it could not fulfill its NRC regulatory obligations."

CCANP disagrees that the initial motion did not show such an adverse effect. The CCANP motion at 9 indicates the potential loss should the partners file similar suits would "easily surpass $1.5 billion and make HL&P completely responsible for raising the money needed to finish STNP." The current estimated cost of STNP is $5.495 billion. Whether in refunds to partners or in costs to complete STNP,

HL&P would be responsible for that amount rather than its current $1.7 billion share of the projected total. Furthermore, should HL&P have to pay the partners a refund of $1.5 billion, that sum would be more than six times HL&P's net earnings in the twelve months ended April 30, 1982 - the year before the Allens Creek loss. Such a judgment would put the company into receivership. In fact, from conversations with Austin attorneys, CCANP's best judgment is that HL&P will go into receivership rather than permit the Austin law suit to go to trial.

D. Propriety of Litigating Speculative Events in a Licensing Hearing

In its Memorandum and Order, the Board states:

> "As for the generally deteriorating financial condition of the nuclear industry, to which CCANP refers as background to it motion, the NRC explicitly referenced that condition when it amended its rules."

Again, the Board position proves too much. At some point, the national climate for nuclear investment would be so hostile to those seeking such investment that a waiver would be justified. Again there is no line drawn by the Board. Just because the Commission once considered a general condition does not mean that condition could not change sufficiently to warrant reconsideration. The national financial conditions have deteriorated significantly since the Commission adopted the rule; there is a qualitative difference between those conditions at the time the rule was adopted and those conditions today.

Recent events make this issue more than merely a background issue. Two of the partners in STNP - the City of Austin and the City Public Service Board of San Antonio - are municipally owned utilities. They seek investment capital in the municipal tax free bond market.

The default at WPPSS appears to have made $2.25 billion in municipal tax free bonds worthless. See Exhibit 1 hereto. Even further defaults could follow at WPPSS.

The municipal tax free market is primarily an individual investor market dependent on the confidence of such investors. Id. at 82. The primary attraction of the municipal tax free bonds was their apparent risk free nature. WPPSS has damaged that perception, creating potential difficulties for both municipal utilities in STNP.

Higher interest rates and/or no bidders are both possibilities for their future bond issues. Even municipal governments can only stand so much debt before they cannot pay their bills, e.g. New York and Cleveland.

The national economic climate for STNP is in turmoil with all signs pointing toward major deterioration.

1. HL&P Future Earnings

Licensing hearings are predictive in nature. Financial qualifications review is especially uncertain because of the difficulty in predicting with certainty the factors which may affect an applicant's ability to meet its license obligations. However, the Commission held in Seabrook that likely PUC action is a proper subject of litigation. Seabrook at 20. Since the PUC is already on record as committed to recouping expenditures caused by mismanagement and since CCANP will be prepared to put on evidence as to the amount of such expenditures, substantive litigation is appropriate.

From the PUC's treatment of any potential losses suffered by HL&P in its litigation with Brown and Root, see CCANP Motion for New Contention, Exhibit 1 at 5, item 4, it is clear that losses suffered by HL&P in the Austin law suit and similar suits by the partners will not be recoverable from the rate payers but instead will reduce HL&P's revenues.

2. HL&P's Safety Record

The Commission stated that utilities have a self interest in safety, which absent significant financial pressures, would prevent safety violations. However, prior to 1982, HL&P suffered no significant financial pressures, other than a project over budget and behind schedule. Yet its safety record was abysmal. A major breakdown in the quality assurance program produced the largest fine in NRC history up to that date and an Order to Show Cause threatening to shut down all safety related construction.

HL&P's safety record to date indicates that even absent the significant financial pressures it is experiencing and will continue to experience as the price of mismangement, it will not operate STNP safely. Even without PUC penalities or major law suit losses, the financial pressures on HL&P are severe. See Exhibit 2 hereto.

Just as HL&P continued to pursue Allens Creek for years after it no longer made economic sense, HL&P is refusing to consider cancellation of even Unit 2 of STNP despite a recent report of the Department of Energy that such a cancellation seemed appropriate and the opinion expressed by financial advisors that Unit 2 should be cancelled. See "Nuclear Plant Cancellations: Causes, Costs, and Consequences" DOE/EIA-0392, April 1983 and Exhibit 2 at last page bottom column 2. Forced into a massive construction program, HL&P is already over extended in its demand for new infusions of capital.

3. NRC Inspection/Investigation

The Board recognizes that Region IV inspection efforts in the past have been less than effective. Memorandum and Order at 12. But the Board notes that reorganization and restructuring have taken place, apparently indicating a belief that such reorganization and restructuring has improved NRC performance. The Board also notes that the NRC can call on other resources than Region IV field office personnel.

In response, CCANP calls the Board's attention to the Comanche Peak proceeding, Dockets 50-445 and 50-446 in which the ASLB has called into question the efficacy of NRC investigations. Exhibit 3 hereto is a copy of a recent ASLB Memorandum in the Comanche Peak proceeding in which the ASLB demonstrates such a lack of faith in the NRC's investigative abilities that the ASLB requests the State of Texas to conduct an investigation of inspector intimidation at Comanche Peak.

Further there is Exhibit 4 hereto, not yet filed in the Comanche Peak proceeding by the intervenor, but soon to be filed. This exhibit contains an even more recent document demonstrating incompetence in a Region IV investigation. The exhibit includes the relevant portion of the challenged investigation.

In this latter case, the availability of other NRC investigative resources really is irrelevant. The national office will come in under extraordinary circumstances, like the special investigation which produced I&E 79-19. But for routine inspections/investigations, it would be fruitless to go running to Washington every time Region

IV fails to perform.

III. Conclusion

The Commission exempted electric utility applicants from financial qualifications review because it found them generally to be financially qualified to safely build and operate nuclear power plants. Although it relied principally on the role of state regulatory boards in setting electric rates, it also cited the utilities' self interest in safety and the NRC's own inspection and enforcement process as further justification for the change.

CCANP contends that HL&P will not receive sufficient rate support to meet its safety obligations. CCANP contends further that HL&P's safety record to date and the performance of the Region IV Inspection and Enforcement office substantiate a concern that financial reverses will lead to safety violations by HL&P at STNP.

CCANP contends that the possibility of large revenue deficiencies caused by the national economic climate for nuclear investment, the PUC of Texas, and litigation involving HL&P raise a substantial question of fact regarding HL&P's ability to make a reasonable assurance that it can raise sufficient funds to meet its license obligations. Therefore, CCANP prays that the Atomic Safety and Licensing Board certify CCANP's motion to the Commission for determination.

In addition, CCANP amends its motion as to the timing of the ASLB hearing on said contention. In its original motion, CCANP proposed the financial qualifications contention be heard in the expedited phase of this proceeding. CCANP Motion for New Contention at 1.

Upon reflection, CCANP believes that the contention would be more appropriately heard at the normal time for such licensing hearings, i.e. in 1985 given the current schedule of the project.

The events of concern in this motion will have that much more time to mature. The Board will thus be in a better position to assess their potential impact on safe operation.

Respectfully submitted,

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Dated: July 29, 1983

Exhibit 1



# THE FALLOUT FROM 'WHOOPS'

## A DEFAULT LOOMS, CASTING A PALL OVER THE ENTIRE MUNICIPAL MARKET

Washington Public Power Supply System, better known by the satiric sobriquet "Whoops," designed its five nuclear power plants to withstand an earthquake. But as it turned out, WPPSS' ambitious undertaking fell victim to an equally destructive though more prosaic force: human error. Quite probably, only one of these plants will ever generate electricity. Two already have been abandoned. Yet WPPSS has more than $8.3 billion in debt.

That this is a blunder of epic proportion is clear. However, who must pay for it and how much it will end up costing remains very much in doubt. Obviously, the stakes are high for WPPSS—the largest issuer of tax-exempt municipal bonds ever—and the entire Pacific Northwest. But the nation's utility industry, and every state or local government that hopes to tap the bond market, also has a vital interest in the outcome, as do thousands of individual investors, most major insurance companies, and much of Wall Street. Even the federal government, through the Bonneville Power Administration (BPA), has a major stake.

**FINANCIAL MELTDOWN.** The immediate threat to all parties is that WPPSS will default on $2.25 billion in bonds sold to finance the two canceled plants (Nos. 4 and 5). This would easily be the biggest municipal default in history, fully the equal of the largest corporate defaults in legal complexity and the amount of investor money at stake. The financial meltdown of WPPSS does not imperil the nation's banking system, because the supply system has no bank loans. But it does pose the gravest threat to the nation's municipal bond market since New York City missed a payment on $2.4 billion in short-term notes in 1975.

A Whoops default could inflict more grievous damage than did New York City's brush with bankruptcy. The tax-exempt market now is much more vulnerable to severe disruption, because new-issue volume is soaring while the banks and insurance companies that traditionally have been the biggest buyers of municipals have deserted. The market is heavily dependent now on individual investors (chart, page 82), many of whom took their first tentative step into tax-exempt investing by buying Whoops bonds—which initially were highly regarded by the credit rating agencies and aggressively marketed by many of the premier Wall Street brokers.

"This whole Whoops affair has taught us that the emperor has no clothes in the muni market," says Peter J. Schmitt, director of research at Prescott Ball & Turben. In addition to graphically illuminating the inherent hazards of an investment still widely misperceived as risk-free, as well as tax-free, the Whoops debacle also calls into question the validity of basic techniques increasingly used by many state and local governments to finance major construction projects. Indeed, a Whoops default would be widely perceived as a court-sanctioned assault on the contract itself—the definitive element of any security.

**'WE WON'T PAY.'** On June 15 the Washington Supreme Court released utilities in that state from contracts they signed with WPPSS obligating them to pay for plants 4 and 5 even if they never are completed. The decision is "shocking, it really is," says Ryland E. D. Chase, a veteran municipal bond consultant. "It just rips up contracts. In the case of New York City, the city said, 'We want to pay, but we can't.' Here, it's a matter of, 'We won't pay, period.'"

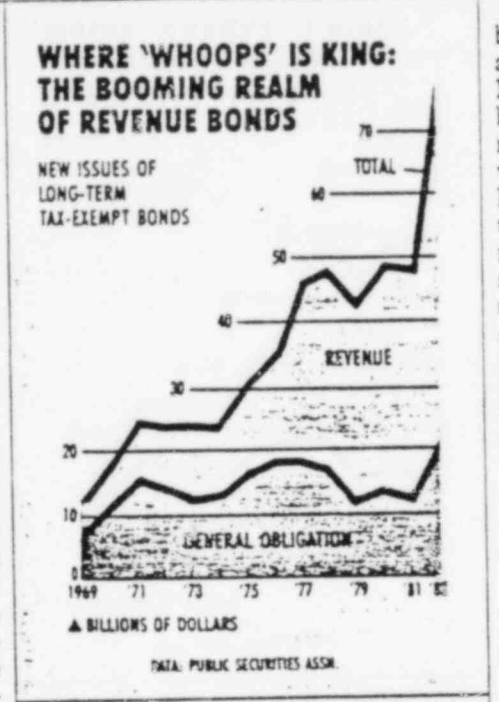
Although so far the market has taken WPPSS's slide pretty much in stride, many market watchers fear it eventually will sour individual investors on all municipal bonds. That would drive up the borrowing costs of all states and localities and probably squeeze some of them out of the market altogether at a time when their need for outside financing is acute. "It is like telling off the witch doctor and then waiting for the lightning bolt to strike," declares James A. Lebenthal, chairman of Lebenthal & Co. "There is a curse hanging over the mar-

other $6.1 billion of bonds in lengthy, unpredictable court proceedings.

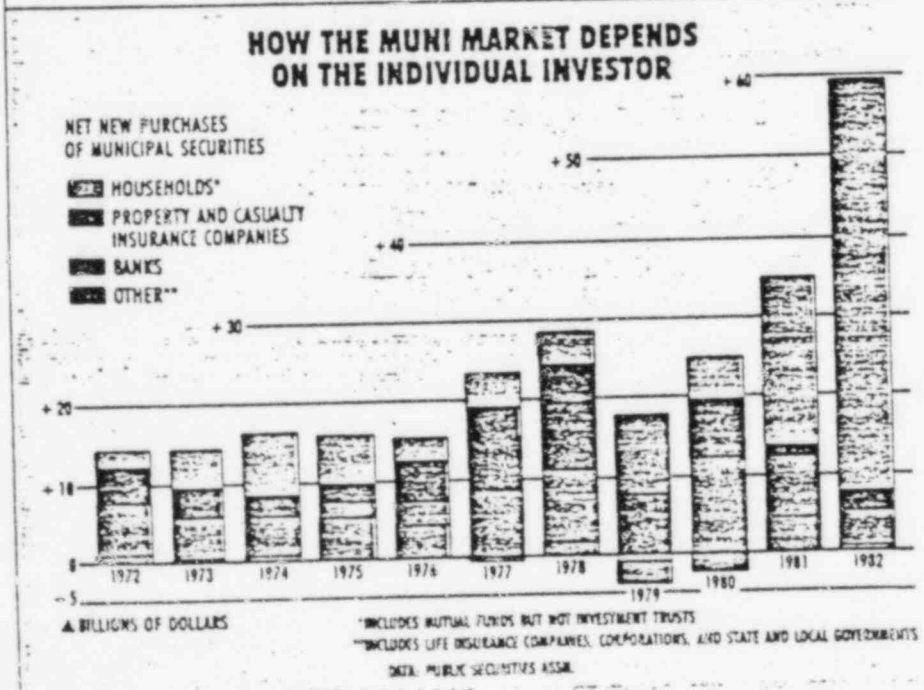
"That would turn a disaster into a catastrophe," warns Energy Secretary Donald Paul Hodel, who was chief administrator of Bonneville at the time the two doomed plants were planned. Nonetheless, Hodel echoes the view of others in the Reagan Administration and Congress in arguing that the federal government should not become involved until the thicket of WPPSS litigation is cleared away and a consensus view on how to resolve the crisis emerges in the Northwest. "We cannot impose a solution on a barroom brawl," says Hodel.

The Washington Supreme Court decision—which followed a similar ruling by an Oregon court—probably dashed WPPSS's last remaining hope of maintaining solvency. Although "more political than it should be," the ruling is "final and fatal," sighs Don C. Frisbee, chairman of Pacific Power & Light Co., owner of a 10% share of No. 5. "I don't see how default can be avoided now." Because the decision is based solely on a state court's reading of the statutory authority of its localities, it appears doubtful that the U.S. Supreme Court will agree to hear the case.

**'STICK SOMEBODY.'** Although the narrowness of the decision probably will prevent it from setting a legal precedent outside Washington, participants in troubled projects everywhere can be expected to look for legal loopholes of their own. "What the decision means is that if you are going to try to stick somebody for something under a take-or-pay contract, you better have explicit statutory authority to do so," says Joseph Bartlett, a partner in the Wall Street law firm of Gaston Snow Beekman & Bogue.




Bonds for WPPSS Nos. 1, 2, and 3 are backed by take-or-pay contracts between the supply system and a separate group of Northwest utilities. Unlike Nos. 4 and 5, though, the participants have assigned their share in the project to Bonneville, which is responsible for meeting all obligations to creditors. The BPA will provide the $150 million needed to finish No. 2, which is 98% complete. However, work on No. 1 (63% complete) was suspended a year ago, and Bonneville is refusing to help WPPSS obtain the bank credit line it needs for No. 3, 74% complete.




Despite the BPA's backing, prices of bonds for plants 1, 2, and 3 plunged after the state Supreme Court ruling. Moody's suspended its rating on the bonds on June 1 because of the deteriorating financial condition of Bonneville, which sells the power output of federally owned dams in the Northwest to utilities. Although the BPA has boosted its rates 500% to 1,200% since 1979, its costs are rising faster than revenues.

**PERVASIVE CHILL.** Bonds for Nos. 4 and 5 also nose-dived and now are fetching bids of only about 20¢ on the dollar. The carnage spilled over to the bonds of many other Pacific Northwest issuers—even those without direct involvement in Whoops—and into other electric power bonds, particularly those backed by take-or-pay contracts. Some analysts detect an even more pervasive chill.

"It has cast a pall over the entire market," says Philip Braverman, capital markets analyst for Chase Manhattan Bank. During periods of climbing interest rates, taxable government bond rates usually rise twice as fast as tax-exempt rates. But since early May, tax-exempt yields on average are up a full percentage point, while taxable rates have risen only a half point, says Braverman, adding that Whoops "was a major contributing factor."

The spike in rates could have been even higher had new-issue volume not tailed off recently from a record $17.5 billion pace during the first quarter. Whoops was partly responsible for that, too, as North Carolina Municipal Power Agency No. 1 postponed a $350 million offering rather than test the market in the wake of the court ruling. However, most market watchers expect issuances to boom again soon. The long recession and limits on federal aid have crimped state and local revenues, while pressure to provide services keeps growing and roads, bridges, water systems, and other infrastructure keep deteriorating.

**'PUBLIC PURPOSE.'** The taxpayer revolt that spread after passage of California's Proposition 13 has left many states or cities unwilling or unable to raise taxes. It also has curbed the use of the general obligation bond, which is backed by the full taxing power of the issuer and hence is subject to voter approval. That leaves the revenue bond as many municipalities' only hope for raising capital. Revenue bonds are paid off from fees collected from the users of the project being financed.

The revenue bond has proven such a flexible tool that localities have adapted it to increasingly diverse use—rapidly expanding their definition of "public purpose" financing to encompass factories for private use, housing, pollution con-

so WPPSS Nos. 4 and 5 were launched without the benefit of net billing.

The task of simultaneously building five state-of-the-art plants at a time of rising interest rates and intensifying regulatory scrutiny of the nuclear industry soon proved too much for WPPSS and the small-town businessmen on its board. WPPSS stepped up its bond sales in a futile effort to keep pace with soaring costs. Completion dates slipped, public opposition took root, and eventually the *raison d'être* for the plants evaporated as demand for electricity in the Northwest grew about 1% yearly—far below the 7% that had been projected.

Although some of WPPSS's failings were peculiarly its own, Wall Street was intimately involved every step of the way and kept the cash spigot wide open until belated investor skepticism forced it closed. "They became captives of the mystique of the nuke," WPPSS Chairman Carl Halvorson has said of his fellow directors. "And they had unlimited money. That was the worst of it."

ENERGY SECRETARY HODEL: "WE CANNOT IMPOSE A SOLUTION ON A BARROOM BRAWL"

In March, 1981, WPPSS came to market with what turned out to be the final sale of Nos. 4 and 5 bonds. The $200 million offering was rated A-1 by Moody's and A+ by Standard & Poor's Corp.—each agency's third-highest rating. Less than three months later, WPPSS Managing Director Robert Ferguson announced that the supply system had reestimated the total project's cost at $23.9 billion, up from $15.9 billion. He called for a "moratorium" on construction of Nos. 4 and 5. Soon work was stopped on the two plants, never to resume.

Officials of other big joint-action agencies downplay Whoops' significance. "There will be a tendency to evaluate an agency like ours more closely, but the economics of joint ownership are still there," says Donald L. Stokley, general manager of Municipal Electric Authority of Georgia. Others in the industry, however, suspect that the joint-action agency movement already has crested.

**'WITCH-HUNT.'** Municipal utilities in New England and Texas are reevaluating their participation in mammoth projects plagued by ballooning costs. Through joint-action agencies, municipalities hoped to obtain a secure supply of power at a lower price than if they had contracted for it themselves. But some got in over their heads. "Municipals have to be careful to buy small chunks they can handle," says Phillip C. Otness, executive director of New England Power Pool. "The next era of generation will be smaller plants."

Says Richard Freeman, a managing director of the Tennessee Valley Authority: "The structure of WPPSS was so thin that any error in its predictions of demand or any cost overruns did not leave much margin for error. If you have any entity that is building five nuclear plants and nothing else, then you don't have a firm situation. [A WPPSS default] is going to cause the financial community to look very carefully at any plan for new capacity."

Such scrutiny will not be limited to the electric power sector, suggests John E. Petersen, research director of the Municipal Finance Officers Assn. "A creditworthiness witch-hunt will be visited on all of project finance," especially projects accomplished through special financing authorities not directly backed by taxing power, he says. "Whoops is not going to bring the muni market to a grinding halt, but it will cause a lot of consternation about the appropriateness of tax-exempt financing."

**BLIND FAITH.** The proliferating use of municipal bonds already is coming under increasingly strident attack in Washington, D. C. For example, early in June the Treasury Dept. asked Congress to enact strict limits on the burgeoning use of tax-exempt industrial revenue bonds, charging that they are often used to subsidize construction projects of questionable public benefit. In addition, some Wall Streeters fear the furor kicked up by Whoops might lead to formal federal regulation of the muni market, which today is largely unregulated.

"There has been an awful lot of blind faith placed in contract terms" in the market generally and insufficient attention paid to the economic viability of projects and the financial condition of issuers, says Jeffrey Alexopolous, director of municipal research for T. Rowe Price Associates Inc., which unloaded Nos. 4 and 5 bonds in 1978-79. By the end of 1977 three separate studies—[illegible] by the federal government and the BPA—concluded that low-cost conservation measures could eliminate the need for at least two Whoops plants. However, these reports received scant mention in early prospectuses.

Following past calamities, [illegible] Spiotto notes, "the municipal bond market has demanded that there be [illegible] tive action." In the wake of Whoops, municipalities will be pressured to offer fuller financial disclosure. More issues will be insured against default, with [illegible] ing out weaker issuers. "We don't [illegible]

## EVEN AFTER 'WHOOPS,' THERE ARE SOME SAFE MUNI BETS

Although "Whoops" is tarnishing the image of all municipal bonds, strong issuers can still be found in the tax-exempt market. Many analysts include Texas, Virginia, North Carolina, and Missouri among the fiscally healthiest states and favor [illegible] timore, Cincinnati, Dallas, and San [illegible] go among major cities. Geographical proximity to Whoops has not hurt Portland, Ore., which is rated AAA. Even such public power agencies as Intermountain Power, which has drastically cut its nuclear building program, and Municipal Electric Authority of Georgia remain on the buy lists of some analysts.

we should enhance a security [with insurance] to the point where ill-advised projects are brought to market," says John Butler, president of the dominant insurer, Municipal Bond Insurance Assn.

**RUSTING REMINDERS.** The rating agencies, stung by accusations that they were too slow to react, will expand their analytical staffs and plug into computerized data bases. Wall Street firms, too, will beef up their muni research staffs, many of which were set up only in recent years, and take greater pains to insulate analysts from sales pressures. "Inevitably, situations arise where there is an inherent conflict of interest between servicing [underwriting] clients and investors," says Howard Sitzer, municipal research director for Thomson McKinnon Securities Inc. "There is a need for autonomous research that cannot be compromised."

Whoops will not be easily forgotten. The courts will be clogged with its legal debris for years. And for what could be decades, near Satsop and Richland, Wash., two partially completed nuclear power plants will stand as rusting reminders. The thought of spending a fortune to tear down what a fortune to erect is more than anyone can bear at the moment.

the Snowbelt if electric service were unreliable? HL&P offers two grim options—pay up to four times as much for electricity, or sweat in the dark.

HL&P bases this choice on three assumptions. The first is that the Houston area faces a serious shortage of electrical capacity by the end of the decade. The second is that quadrupling electric rates will have no effect on Houston's economic growth. The third is that only HL&P can build the additional generating plants needed to slake Houston's lust for electricity. These assumptions look reasonable. Accept them, and an inescapable conclusion follows—consumers must pay for the additional power plants, no matter how high the price.

The fact is, however, that each of HL&P's assumptions should be questioned.

True, demand for electrical power is growing in Houston. Approximately 3000 megawatts more electrical generating capacity will be needed by the end of the decade—a 29 percent increase over current capacity. But there are those who say HL&P could deliver as much as two-thirds of the additional capacity without raising electric rates a single cent, and at no loss in comfort or reliability to any of its customers.

This may sound like the proverbial free lunch, but it's not. How can it work? The answer depends on a complicated mix of politics, economics and technology—and some say the solution may require rearranging the way HL&P does business. Anyone who thinks electric rates were a political issue when Mark White ran for governor last year ain't seen nothing yet. The circus is just starting, and HL&P will be in the center ring. What is plain already is that the stakes are too high to let the issue simply run its course.

First things first. HL&P is not run by a bunch of bloated and greed-crazed comic-opera capitalists with dollar signs on their vests, nor (given the way electric utility regulation is set up in Texas) can HL&P be considered mismanaged. It's simply a business, maximizing profits within the constraints of the law. The company has made some mistakes, but by and large consumers are responsible for most of the problems HL&P now presents. Houston is built on the availability of cheap energy, and inexpensive electricity is the crucial link that has held the city's boom-town growth together for five decades. For most of the past 101 years, HL&P (since 1977 a subsidiary of Houston Industries, Incorporated) has provided reliable low-cost electric service to all comers in the area. Local electric bills are much higher than the national average, but that is because Houstonians consume almost twice the national average in electricity—1149 kilowatt hours here, compared with an average of 651 kilowatt hours in the rest of the country. (A kilowatt is one thousand watts; running a hairdryer for an hour uses about one kilowatt hour of electricity.) Although average monthly *bills* are high here, HL&P's *rates* are still relatively low, at last count only 5 percent above the national average.

In exchange for providing service to its customers, HL&P has enjoyed protection from competition as a regulated monopoly in the most pro-utility climate in the country, growing to be the nation's fourth largest investor-owned utility in terms of sales. Like its cousins in Texas, HL&P performed better financially than most utilities in the U.S. This explains why so much of the company's stock is held by banks, pension funds and other institutional investors.

However, you wouldn't know HL&P is in relatively good financial shape from hearing its pleas for "rate relief." Most utilities have poor-mouthing down to a science, but HL&P tells a different story to its stockholders, proudly maintaining that, even in the troubled past several years, while cost overruns piled at its nuclear construction projects and its bond ratings have been downgraded, "the dividend [paid per share of stock] has grown at an average annual rate nearly double that of the electric utility industry," to quote a company report.

Compensation for the HL&P's executives also has increased handsomely. Company records show, for example, that Don D. Jordan was paid $106,967 in 1976 for services as president and director of HL&P. In 1981, as president, director and chief executive officer of HL&P and Houston Industries, Jordan earned $280,983 in salaries and fees. Directors' fees, salaries and bonuses for all company officers and directors increased from $1,041,495 annually to $2,202,786. (All this in just five years.)

HL&P's investors have been relatively pleased, but ratepayers have found little to cheer about in the last decade—rates have quadrupled since 1972, driven upward mostly by escalating fuel costs. (The rate increases for the rest of this decade will result from construction costs and inflation.)

"We have given up on building a system that can supply all Houston's need for electricity," says HL&P spokesman Graham Painter. "We're depending on a three-part program to help us fill the needs we can't finance: conservation, load management and cogeneration. Nevertheless, we're going to have to raise a lot of money to finance construction we can't avoid, and that's going to have to come from our ratepayers and investors."

HL&P does have one of this part of the country's most aggressive programs for promoting conservation and "load management." And HL&P has begun cooperating with industrial customers who generate electricity while producing heat normally used in industrial processes—"cogenerators" in industry jargon (more about them later).

These programs are insignificant compared with HL&P's construction program, however. The Light Company says it will have to spend an average of $1.34 billion per year until 1991 to finance a two-unit nuclear plant in south Texas and a pair of two-unit coal-fired generating plants in northeast Texas, increasing the total amount of capital it has invested from $4 billion to nearly $17 billion. It's the biggest construction program planned by any major utility in the country. That's why, Wall Street analysts say, the company will need 15 percent to 20 percent rate increases each year for the rest of the decade. The company has said it'll ask regulators for the money year after year until it gets what it wants. The alternative, HL&P insists, is too awful to contemplate—brownouts, Houston's economy wrecked on the shoals of electrical insufficiency.

"That seems like an awful lot of money for construction, but we're holding it to the minimum," says Graham Painter. "You have to remember that electric rates went up almost as fast in the 1970s."

True, but so did rates all over the country. In the 1980s, according to Leonard Hyman, vice president and head of Merrill Lynch's utility research group in New York, most utilities will be asking for rate increases averaging less than 10 percent. This means HL&P's rates will be increasing much faster than the national average, and electrical costs here could be among the highest in the country by the end of the decade. Which would mean the end of the cheap electrical power that has fostered economic growth in Houston.

## Comparison of Electric Rates By Cities*

Cents per kilowatt hour:

New York City: 12.97
$$$$$$$$$$$$

San Diego: 10.49
$$$$$$$$$$

Philadelphia: 8.92
$$$$$$$$

**Houston: 8.35**
$$$$$$$$

Chicago: 7.83
$$$$$$$

Dallas: 6.80
$$$$$$

Los Angeles: 6.73
$$$$$$

Average rate: 7.91
HL&P rate 5% above average.

**For 12 months ended July 1982.*

*Joel Warren Barna is executive editor of* Cite *Magazine.*

But HL&P's opponents insist there is a crucial difference between the projected situation in the 1980s and what happened in the 1970s. HL&P's rates will be rising much faster than the national average, according to utility researchers. This means that Houston's attractiveness to new business will be seriously damaged. And that's not the only possible effect.

"That scenario for rate increases would make it difficult, if not impossible, for many merchants to keep their stores open," says Maurice J. Aresty, president of the Retail Merchants' Association of Houston. "Energy costs already approximate occupancy costs for a lot of retailers here."

Energy consultant Albert Smith, president of Power Systems Engineering, Incorporated, a major Houston firm, predicts that effects of a precipitous rise in electric rates, unmatched by similar increases elsewhere, would be disastrous. "If electric rates go up as fast as predicted, many of HL&P's large industrial customers would be forced to cut back on their consumption or even shut down and move elsewhere," says Smith. "HL&P gets over 50 percent of its revenue from big industrial clients. That's the class of service most susceptible to curtailment."

Take a big chemical plant manufacturing chlorine on the coast as an example. Smith suggests that, like most of the chemical companies in the area, this manufacturer has facilities in several other states. If electric rates start rising significantly faster here than elsewhere, the company won't have any choice but to move its chlorine production to another facility.

"A cutback by a substantial number of HL&P's industrial customers would be a catastrophe," says Smith. "HL&P would have to raise rates for residential consumers even higher to take up the slack. Then what's called the 'consumption spiral' starts—rising prices force customers to cut back on usage, and that triggers another price increase, as HL&P's costs have to be spread over fewer kilowatt hours sold, triggering more conservation. It's one of the worst possible scenarios for a utility."

Other analysts agree. Dale W. Steffes of the Houston-based Planning and Forecasting Consultants, whose predictions of slow electrical demand and sagging oil prices have proved among the most reliable in the country, says that electric rates in Houston have *already* reached what economists call "price elasticity"—the point at which people cut back on consumption to avoid higher bills. This means, Steffes says, the downward conservation spiral already has begun.

"Consumers already are cutting back; prices are too high," Steffes says. "There's no law that can force consumers to consume. If you *overestimate* demand and therefore overbuild, you increase costs per unit, driving consumption down more. But, if you make the lesser mistake of *underestimating*, you at least keep unit costs down."

The newly activist regulatory agencies of the city of Houston and the state of Texas are beginning to agree with Steffes—one way or another, they're not going to sit still while such a spiral gains momentum. They are focusing on what they believe are flaws in HL&P's second assumption—that the Houston area is facing a severe shortage of electrical capacity by the end of this decade.

"Houston City Council has the responsibility of looking out for the economic well-being of the city," says Councilmember George Greanias, head of that body's Select Committee on Rate-Making Policies, which is studying ways to make HL&P's management more efficient. "That doesn't mean we oppose every rate increase or we don't think HL&P should build any new generating plants. It does mean we have to evaluate every request carefully to make sure it's necessary and *beneficial* to the local economy, and there is no lower-cost way of meeting growth in demand."

The city has beefed up its regulatory workforce in the past year, adding several veterans of the state public utility commission to its staff. If the reforms recommended by Greanias had become state law, the city could have become a significant force in setting HL&P's rates. But under current state statutes the real regulatory power rests with the three-member Texas Public Utility Commission. So, until the law changes, Houston is just another intervener in rate cases before the PUC.

*If electric rates go up as fast as predicted, many large industrial customers would be forced to cut back or shut down and move elsewhere.*

The PUC has had an interesting history, and it promises considerable entertainment in the near future. In December of 1982, H. Moak Rollins, a Clements appointee under whose chairmanship the PUC had retained its reputation as one of the most pro-utility regulatory bodies in the country, startled just about everybody by denouncing HL&P's management. The HL&P board, according to Rollins, was dominated by "insiders," and he said none of its members had any "credibility" on Wall Street. He charged that HL&P had mismanaged the South Texas and Allen's Creek nuclear projects, and he ordered that the company's earnings be cut by half a percent. He threatened to cut the amount the company could recover from funds spent on
Texas project by an unspecifie
Most strikingly, Rollins suggest
HL&P allowed any service int
(brownouts) in the future, the bo
consider "decertifying" part o
service area—handing its custom
other utilities.

HL&P, after taking a couple
catch its corporate breath. iss
rebuttal to Rollins' remarks an
the PUC ruling to a state distric

Since then, if anything, thing
ten worse for HL&P at the PU
and the other Clements holdo
signed and were replaced by pe
much different philosophy of ut
tion. New PUC chairman Alan
example, says the former mem
board spent too much time prot
ties when they should have bee
out for the interests of consum
the only thing his predecesso
right, Erwin says, was castigate
December.

Erwin says he doesn't think H
ing a real shortage of electric
"I'll grant that *demand* is rising
ton area. But that doesn't mea
*shortage*, except if you exclude
utility in the region from consi
fact, HL&P is surrounded by o
ties—there's over-capacity in
shortage. Of course, HL&P
build more facilities, but that d
we should automatically okay e
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tainly a mistake to treat ea
isolation."

Estimates of growth in d
capacity for each of the state'
file at the PUC, appear to sup
contention. They indicate oth
ities in the state could sell H
hundred megawatts of power,
waste, well into the 1990s. St
ties, connected with vast re
pools in surrounding states, so
terconnected with HL&P and
utilities, PUC staffers say. Th
several hundred more megaw
will be available for HL&P to

"There probably are mo
megawatts of unused power
HL&P to purchase," says
could subtract billions of d
struction from what HL&P
rate increases for consumer
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power from utilities opera
states, but it looks as though
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quest for construction fund
available option for serv
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Exhibit 3

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before Administrative Judges:

Peter B. Bloch, Chairman
Dr. Kenneth A. McCollom
Dr. Walter H. Jordan

In the Matter of

TEXAS UTILITIES GENERATING COMPANY, et al.

(Comanche Peak Steam Electric Station, Units 1 and 2)

Docket Nos. 50-445
50-446

(Application for Operating License)

July 6, 1983

MEMORANDUM
(Response to Commission Order of June 30, 1983)

On June 30, 1983, the Nuclear Regulatory Commission issued CLI-83-18, which contained some questions for this Board to answer within ten days. This Memorandum is our response.

I. Identity of Interviewees

This Board will not pursue any questions concerning the identity of people interviewed for the preparation of Staff Exhibit 199 or the nature of the participation of individuals in that Exhibit.

II. Tentative Schedule on Atchison-Related Matters

By separate order of today's date, this Board has determined that a recent decision of the Secretary of Labor concerning the dismissal of Charles A. Atchison is entitled to collateral estoppel effect in this proceeding. This establishes that one individual was discharged by applicant for reporting quality control deficiencies.

We believe that pursuit of the implications of the Secretary of Labor's decision requires us to inquire further into whether or not

To this point, the Commission's staff (staff) has never focused an investigation on this precise point. The Atchison investigation focused on the firing of that one individual. The Construction Assessment Team focused on the paper records of non-conformances and never conducted any evidentiary investigation of this point.

There are several ways to make our record more complete. One would be to ask the staff to present more evidence. In one respect, we consider this to be an appropriate way to proceed and have asked the staff to pursue this matter during yesterday's on-the-record telephone conference among the parties. We have suggested to the staff that it conduct a limited number (about five) of confidential interviews with non-supervisor quality assurance inspectors or craft personnel in order to determine whether there has been a practice of discouraging non-conformance reports. Staff counsel has expressed a willingness to initiate such an inquiry; and staff will inform the Board by July 8 concerning whether this investigation will go forward.

With respect to witnesses previously interviewed by the staff, we think that the inconclusive nature of the previous staff investigation requires us to ask that some other mechanism be used to complete our record. The adequacy and reliability of this particular investigation was questioned by this Board. See Notice of Resumed Evidentiary Hearing, March 4, 1983 at 4-6. Subsequently, this Board has not pursued this publicly-raised question of staff performance. Although it does not now seem to the Board necessary to inquire further into the performance of the investigative team, we do not think it appropriate to rely entirely on staff to present further evidence to us from witnesses it

of the parties may attend), decide that there is no evidence for it to present. If so, it may file a statement seven days in advance of the scheduled evidentiary hearing, stating that it has no evidence to present and attaching affidavits of the witnesses in support of its position.

Although the applicant has objected to these procedures, Staff, CASE and the State of Texas have not objected.

III. Additional Matters

As part of our review of questions raised in this proceeding prior to the appointment of the new Board chairman, we have ascertained, as a preliminary conclusion, that there are two open matters having to do with welding. These matters include weave-welding, which is not prohibited unless transverse oscillation exceeds code standards, and down-hill welding, which also is acceptable in some applications. With respect to weave welding, there is an allegation that it had occurred. Applicant's explanation appears to be incomplete because it rests on: (1) a statement that some transverse oscillation is permitted, and (2) a statement that some weave welding has been reported on non-conformance reports. There apparently was no attempt to investigate further to ascertain whether there may be a real problem that has not come to management's attention. (See Tr. 8635-8639.) Similarly, applicant's response on down-hill welding is that it is permitted in root-and-cover pass welds. Apparently, applicant assumes that those are the only welds that the person making the allegation could have any knowledge of. But the record does not show the scope of the alleger's knowledge, nor does it

Exhibit 4

# AFFIDAVIT OF LARRY V. WITT

Q: Please state your name and address for the record.

A: My name is Larry V. Witt. I live at P. O. Box 278, Glen Rose, Texas 76043.

Q: Have you reviewed a copy of Investigation Report 50-445/83-03, 50-446/83-01, which was prepared by the Nuclear Regulatory Commission (NRC) regarding allegations made by Arvil Dillingham, Jr. ("J.R.")?

A: Yes, I have.

Q: We call your attention to page 9 of Appendix B of that Report, item 7(a), which states:

> "Mr. Dillingham apparently stated when intereviewed by the writer of the article that rejected aggregate was mixed with concrete that was subsequently poured to form the base for the nuclear reactor. The article stated that a Larry Witt was the B&R equipment operator who had apparent first hand knowledge of the matter. The article also stated that Mr. Witt could not be reached for comment."

Are you familiar with the article mentioned in the report?

A: Yes, I read the article in the paper.

Q: Are you the Larry Witt mentioned in that article and in the NRC investigation report?

A: Yes, I am.

Q: Please read the portion of the investigation report beginning on page 10, about the middle of the page, the sentence which begins "The above memorandum indicates that a number of other people were interviewed by the B&R investigative group, one of whom was Mr. Witt" through the end of that paragraph.

Please comment on that portion of that paragraph.

A: The material was actually rejected gravel and perhaps rejected sand (I am not certain about the sand). Regarding the scales, the wires were pulled leading to the scale head for the ice bin (instead of leaning on the wires as stated in the report).

Q: The report states that the "B&R memorandum indicates that the investigation relative to use of rejected aggregate was apparently partially substantiated but of no concern in that the aggregated pile, rather than actually being unacceptable, simply had not been tested prior to use as required." Do you agree with that statement?

Q: Do you know where the concrete which contained this rejecte material was used?

A: No. It could have been used anywhere. But I do know that a lot of times it was for Q pours.

Q: Please read the portion of the report on page 11, last para beginning with the first sentence "Regarding the above summarized a tion (a) . . ." through the sentence "It should be noted that only B&R investigative group has been able to establish contact with Mr. all others have apparently failed."

Have you ever been contacted by the SRIC (Senior Resident Inspector-Construction, R. G. Taylor)?

A: No.

Q: Is it true that you are no longer an employee at CPSES?

A: Yes.

Q: Is it true that you have relocated from the Glen Rose, Tex area to another state?

A: No. We do have a field office in Hobart, Oklahoma. But I still live in Glen Rose, Texas, and my business is still listed as Witt Energy Resources, Inc., in Glen Rose, Texas. Many of the peop at the plant with Brown & Root, including Doug Frankum, B&R Project Manager, know me and know that I am still in Glen Rose.

Q: To your knowledge, have any attempts been made to contact by phone at the office in Hobart, Oklahoma, or in Glen Rose, Texas?

A: Not to my knowledge, and I believe someone would have pass this information along to me.

Q: Did you ever sign for a registered letter, receipt request from the NRC Region IV office?

A: No, I did not.

Q: To your knowledge, did anyone affiliated with your busines either in Hobart, Oklahoma, or in Glen Rose, Texas, sign for such a registered letter?

A: Not to my knowledge, and as I stated before, I believe son would have passed this information along to me. No one I have aske about it knew anything about such a registered letter.

Q: How did you first become aware of the NRC investigation re about this matter?

I have read the foregoing 4 -page affidavit, which was prepared under my personal direction, and it is true and correct to the best of my knowledge and belief.

The foregoing affidavit was prepared under my personal direction, and the thoughts and words expressed therein are my own thoughts and words (with the exception of minor grammatical changes, either to correct spelling or to clarify what I meant, which did not change the intent of my thoughts). Where questions were posed, they were posed by CASE.

Larry V. Witt

Date: June 27, 1983

STATE OF TEXAS

On this, the 23rd day of June, 1983, personally appeared Larry V. Witt, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein expressed.

Subscribed and sworn before me on the 23rd day of June, 1983.

Ellen K. Johns

Notary Public in and for the State of Texas

My Commission Expires: Nov. 5, 1986

by the B&R investigation. Both of the substantiated allegations were found by the investigators to have been adequately documented and that corrective measures had been taken or were in progress.

In a separate memorandum dated December 10, 1982, one of the TUGCO investigators documented a phone call from Mr. Dillingham in which Mr. Dillingham apparently made yet additional allegations. One of these allegations regarded welding done by an uncertified welder on the turbine-generator pedestal (by implication). Mr. Dillingham also apparently furth mentioned Mr. Witt who was supposed to know about a sensor that had broken off and was buried in the main dam. Also, Mr. Witt was alleged to have personally driven a front loader that returned dry and lumpy cement that had been rejected to the bin, that this cement had been subsequently used in the reactor core, and that this was why the cracks happened. The writer of the memorandum stated that he had encourged Mr. Dillingham to take his concerns to the NRC. Mr. Dillingham in turn was reported as saying that he had intended on going to the newspapers and Congress instead.

It appears that Mr. Dillingham carried out his above stated intention in that the above referenced newspaper article has appeared and to the best o SRIC's knowledge, Mr. Dillingham has made no contact with any component of the NRC. NRC Region IV determined that the allegations in the news article should be investigated but that those made in the Feehan letter and in the telephone conversation with TUGCO should not. This decision was based on the premise that Mr. Dillingham has had his earlier concerns satisfied except for those appearing in the article.

Regarding the above summarized allegation (a), the SRIC established that Mr. Witt was no longer an employee at CPSES and further established that he had relocated from the Glen Rose, Texas, area to another state. NRC Region IV personnel made several attempts to contact Mr. Witt by telephone at his new address, to no avail. A registered letter, receipt requested, was then sent to Mr. Witt requesting that he contact Region IV as soon as possible. Receipt of the letter was acknowledged but as of this date, Mr. Witt has not contacted the region. It appears that Mr. Witt does not intend to assist the NRC in investigating allegations attributed to him. It should be noted that only the B&R investigative group has been able to establish contact with Mr. Witt; all others have apparently failed. Regarding summarized allegation (c), the SRIC, with assistance of another Region IV inspector, was able to establish that the underwater lighting standards were fabricated in such a manner as to leave drilling chips inside and had not been removed. It was also established that the lighting standards were fabricated completely outside the licensee's QA program which included various welding operations. There are no records of inspection or of the welders involved or of the weld procedures utilized. Review of the design drawings do not reflect that the A/E considered the lighting standards to be within the QA scope, yet should the standards physically fail during the seismic event, fuel could be damaged. Given the possibility of failure, the standards should have been classified as Seismic Category II (licensee's FSAR definition for

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

CERTIFICATE OF SERVICE

I hereby certify that copies of CCANP MOTION FOR RECONSIDERATION OF ASLB RULING OF JULY 14, 1983 ON CCANP MOTION FOR NEW CONTENTION were served by deposit in the United States Mail, first class postage paid to the following individuals and entities on the 29th day of July 1983.

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Board Panel
U. S. Nuclear Regulatory Commission
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Lanny Sinkin