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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
HOUSTON LIGHTING & POWER)
COMPANY, ET AL.)
)
(South Texas Project, Units 1)
and 2))

Docket Nos. 50-498 OL
50-499 OL

APPLICANTS' MOTION FOR
SANCTIONS AGAINST CCANP

I. Introduction

Applicants hereby move the Atomic Safety and Licensing Board (Board) for an order limiting the scope of Citizens Concerned About Nuclear Power's (CCANP) participation in Phase II of the South Texas Project (STP) operating license proceeding to certain of those issues identified in its responses to Applicants' discovery requests. The requested sanction is premised upon CCANP's repeated failure to provide full and fair responses to Applicants' interrogatories, and its failure to comply, in good faith, with the Board's discovery orders. The requested relief is the least severe sanction available to mitigate the harm resulting from CCANP's refusal to provide adequate responses to Applicants' discovery requests, as well as to ensure that CCANP complies in the future with applicable Board directives and NRC requirements.

II. Argument

On March 11, 1983 Applicants served interrogatories on CCANP addressing the Quadrex-related issues in the Phase II proceeding.*/ On April 5, eight days after its answers were due, CCANP submitted an incomplete and evasive response to those interrogatories.**/ Applicants thereafter moved the Board to compel CCANP to provide complete and responsive answers.***/

Before the Board could rule on Applicants' Motion to Compel, however, CCANP moved for, inter alia, an extension of time to respond to the Motion.****/ CCANP's response time was thereafter extended by the Board until May 31, 1983.*****/ Despite its request for this extension, two days after its

*/ Applicants' Sixth Set of Interrogatories and Requests for Production of Documents to CCANP (March 10, 1983), (Applicants' interrogatories).

**/ CCANP Response to Applicants' Sixth Set of Interrogatories and Requests for Production of Documents to CCANP (April 4, 1983), (Original answers).

***/ Applicants' Motion to Compel Answers to its Sixth Set of Interrogatories and for Leave to File Additional Interrogatories to CCANP (April 18, 1983), (Motion to Compel). Applicants also sought leave to file a set of follow-up interrogatories because CCANP's late response deprived them of the opportunity to submit an additional set of interrogatories within the discovery period established by the Board. Id. at 10-12.

****/ CCANP Motion for Deferral of Rulings and Extension of Deadlines (April 20, 1983).

*****/ Memorandum and Order (May 11, 1983), at 4.

response to Applicants' Motion to Compel was due, CCANP informed the Board that it was not filing such a response.*/

Finally, on June 22, 1983, the Board granted Applicants' Motion, finding that CCANP's answers were indeed "incomplete and inadequate."**/ In doing so, the Board recognized that adequate responses would require some effort, and provided CCANP with an additional sixty days to respond.***/ CCANP's subsequent answers were finally served 12 days after the extended deadline set by the Board, and over five months after its original answers were due.****/

Despite the Board's explicit order directing CCANP to respond, and the substantial extension of time provided for it to prepare its answers, CCANP has again submitted inadequate responses to Applicants' interrogatories. In its Supplemental answers, CCANP now raises new objections, and continues to flagrantly refuse to answer Applicants'

*/ Letter, CCANP to the Board (June 2, 1983).

**/ Memorandum and Order (June 22, 1983), at 2. The Board also granted Applicants' request for leave to file follow-up interrogatories. Had CCANP adequately supplemented its answers in accordance with the Board's June 22 order, Applicants' right to propound follow-up interrogatories would have been considerably more meaningful. Given CCANP's failure to provide specific responses which expand meaningfully on their original answers, however, Applicants have no basis for submitting follow-up questions which would amount to anything other than a reiteration of their prior discovery requests. As a result, Applicants will not be submitting additional, follow-up interrogatories to CCANP.

***/ Id. at 4-5.

****/ CCANP Supplemental Answers to Applicants' Sixth Set of Interrogatories and Requests for Production of Documents to CCANP (September 7, 1983), (Supplemental answers).

inquiries. CCANP's actions to date include numerous failures to comply with Board orders and to fulfill the obligations of a party to an NRC proceeding. Its continuing failure to provide responsive answers deprives Applicants of the information necessary to prepare adequately for the forthcoming Phase II hearing.

Pursuant to 10 CFR § 2.707, the Board may impose sanctions against a party who fails "to comply with any discovery order." Such sanctions should be "tailor[ed] . . . to mitigate the harm caused by the failure of the party to fulfill its obligations and [to] bring about improved future compliance," and may include, inter alia, dismissal of the party from the proceeding, dismissal of one or more of its contentions, or denial of the right to cross-examine or present evidence. Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981).*/

*/ The Commission's guidance addresses any circumstance where a party fails to meet its obligations under applicable NRC requirements, including the failure to respond to a discovery order. The Commission has also suggested that its adjudicatory boards consider, when imposing sanctions, "the relative importance of the unmet obligation, . . . whether its occurrence is an isolated incident or part of a pattern of behavior, the importance of the safety or environmental concerns raised by the party, and all of the circumstances." Statement of Policy, 13 NRC at 454. A party's failure to comply with discovery orders has been recognized as "a very serious matter" which is "manifestly unfair" to other parties. Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), ALAB-678, 15 NRC 1400, 1417 (1982). In addition, CCANP's failure to adequately respond to Applicants' interrogatories is clearly not (Footnote Continued)

CCANP's failure to comply in good faith with its discovery obligations seriously jeopardizes Applicants' ability to effectively prepare their case for the Phase II proceeding. Applicants' interrogatories generally inquire into the positions CCANP intends to take on the various Quadrex issues and the bases for those positions. It has been uniformly recognized that such inquiries are not only legitimate, but are absolutely necessary for a party, especially one with the burden of proof, to adequately prepare its case for hearing. Memorandum and Order (June 22, 1983) at 3; Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), LBP-80-17, 11 NRC 893, 895, 896 (1980); Northern States Power Co. (Tyrone Energy Park, Unit 1), LBP-77-37, 5 NRC 1298, 1300-01 (1977).

Given the scope of the Phase II proceeding and the unstructured manner in which the Quadrex issues have been formulated to date, it is even more essential that CCANP reasonably identify its positions and the bases for them.

(Footnote Continued)
an isolated incident. CCANP's answers to Applicants' interrogatories on contention 4 were similarly inadequate. See Applicants' Motion to Compel Answers to its Seventh Set of Documents to CCANP (April 27, 1983). Furthermore, CCANP made a practice of leveling broad charges and refusing to provide specific support for those charges in Phase I as well. See e.g., Applicants' Motion to Compel Further Answers from CCANP (April 15, 1980); Tr. 564-72, 627-28.

In its answers CCANP has refused to provide such information.* / Thus, the Board should impose sanctions upon CCANP which "mitigate the harm" caused by its inadequate responses, and which serve to bring about "improved future compliance." Statement of Policy, 13 NRC at 454.

Interrogatories 1-2

In interrogatories 1 and 2, Applicants sought, inter alia, to discover those NRC reporting requirements which CCANP contends were violated by HL&P in its handling of the Quadrex Report, to determine which findings CCANP believes were reportable, and to elicit the bases for those positions.** / In its response, CCANP argues that all of the "most serious" and "potential problem" findings should have been reported as a breakdown in the STP quality assurance program, pursuant to

* / In its Supplemental answers, CCANP argues that it attempted to identify the issues it wished to litigate in its November 23, 1981 Motion for New Contentions, and implies that the Board's decision not to consider the admission of specific contentions in June, 1982 was made without CCANP's full acquiescence. Supplemental answers at 3. The record clearly shows, however, that CCANP found the approach selected by the Board to be fully acceptable, and endorsed its adoption. Tr. 10542, 10657-58. In any event, CCANP's November 23, 1981 pleading did not provide significantly more definition of CCANP positions than the scant statements in the two CCANP responses to Applicants' interrogatories. Moreover, in view of the extensive reports issued by Bechtel and the NRC Staff since November, 1981, and the subsequent opportunity for discovery by CCANP, it was incumbent upon CCANP to clearly identify the positions it continues to assert and the bases for such positions.

** / Applicants' interrogatories at 1-3.

10 CFR §50.55(e)(1)(i). CCANP argues that the "potential problem" findings were reportable by virtue of the fact that they "could turn out to be" upgraded to "most serious" findings.*/ CCANP, however, does not argue that any of the remaining findings should have been reported pursuant to section 50.55(e).**/

Applicants believe that CCANP's mere assertion that certain findings constituted a breakdown in QA is not responsive to their inquiries because of the failure to identify any basis for such an allegation. However, CCANP's response does provide some indication as to the general tenor of its contention on the "most serious" and "potential problem" findings. As to the remaining findings, it appears that CCANP has no contention at all. In view of its failure to address these findings, CCANP should be excluded from participation in any litigation regarding the reportability of such findings.

In addition, since CCANP has not contended that any Quadrex findings were reportable under any provision of 10 CFR § 50.55(e) other than section 50.55(e)(1)(i), and has not identified the bases for any such contention, it should be barred from participation in any litigation of such an issue.

*/ Supplemental answers at 4-5.

**/ CCANP has had the Quadrex Report in its possession for a sufficient length of time to enable it to identify the bases upon which it might allege that these findings were reportable.

Finally, rather than comply with the Board's order that it respond to interrogatory 2(b) regarding any asserted violations or reporting requirements other than 10 CFR § 50.55(e), CCANP again objects to the interrogatory though it well knows that such objection is not timely and has already been overruled by the Board.* / Accordingly, CCANP should be prohibited from litigating any future assertions regarding such reporting requirements, except to the extent described below in connection with interrogatories 3 and 4. Interrogatories 3 and 4

CCANP's response to Applicants' interrogatories 3 and 4, (seeking any additional information regarding alleged improper "handling" or "commissioning" of the Quadrex Report) essentially asserts that "[t]he improper act in the commissioning of the report was not acting sooner. The improper act in handling of the report was the failure to turn the entire report over to the ASLB and the NRC or to notify the NRC of

* / CCANP cites as the basis for its objection, Applicants' objection to the Attorney General's interrogatory 27. The comparison is inapposite because both the subject matter and the procedural posture are materially different. The Attorney General requested a generalized legal opinion on NRC reporting requirements applicable to a construction permit licensee. Applicants objected to providing a purely legal opinion and to providing their brief in advance of the time provided by the Board's June 22 Order. CCANP was requested to state its contentions regarding reporting requirements and to cite only so much legal authority as necessary to give a clear identification of the reporting requirements at issue. If, by its objection, CCANP is conceding that the only reporting requirements at issue are those to be addressed in the brief required of the Staff by the Board's June 22 Order, an order limiting CCANP's participation as addressed herein should not be objectionable to CCANP. In any event, Applicants had the right to object to such interrogatories, while CCANP had no such right here.

dozens of the findings."*/ CCANP fails to indicate its grounds for asserting that the Quadrex review should have been initiated sooner. With respect to HL&P's "handling" of the Report, CCANP has similarly provided no basis for its position.

However, it is apparent that CCANP's response is intended to reiterate its position in response to interrogatories 1 and 2, and to assert the violation of a duty to turn over the Quadrex report to the Board and the NRC Staff. Whatever the bases upon which CCANP asserts that the Report should have been turned over to the Board and Staff, apparently there are no additional facts at issue beyond those which would be addressed in the context of CCANP's allegations regarding 10 CFR §50.55(e)(1)(i). CCANP's failure, however, to state the bases for any other assertions will impose an unfair burden upon Applicants should they be required to defend against such additional unspecified allegations. As a result, CCANP should be prohibited from litigating any aspect of the "commissioning" or "handling" of the Quadrex Report, except for its apparent contentions regarding the duty of HL&P to turn over the Quadrex Report to the Board and the NRC Staff pursuant to 10 CFR § .

*/ Original answers at 3. CCANP's Supplemental answers provided that it had "nothing to add" to its original answers. Supplemental answers at 5-6.

50.55(e)(1)(i) and the "McGuire rule."**/
Interrogatories 5 and 6

In interrogatories 5 and 6, Applicants asked CCANP if it contends that the Quadrex Report identifies any aspects of the STP design or engineering or the design or engineering process which violate NRC requirements. CCANP was requested to specify the alleged violations and the bases for its positions.**/ CCANP responded to these inquiries by again arguing that all of the "most serious" findings document violations of NRC requirements, and that the "potential problem" findings might ultimately be deemed "most serious." Rather than specifying the alleged violations, CCANP asserts that by reviewing the relevant findings, "Applicants can answer this question for themselves."***/ Such a response is clearly not an attempt to provide the supplemental information required by the Board's June 22 Order, but rather a clear defiance of that order.

*/ In its original answers at 3, CCANP does briefly mention the McGuire rule. If CCANP has not specified any other allegations regarding the commissioning or handling of the Quadrex Report, because it does not intend to raise such issues at the hearing, then the requested sanctions will have no practical effect on its participation in Phase II. If, on the other hand, CCANP does intend to address these issues in Phase II, it has failed to meet its discovery obligations as a party to this proceeding, and the requested sanctions are clearly warranted.

**/ Applicants' interrogatories at 4.

***/ Supplemental answers at 6.

CCANP's response may be taken as a reiteration of its assertion regarding reportability of the "most serious" and "potential problem" findings pursuant to section 50.55(e) (1)(i), and as a concession that its position in Phase II regarding alleged violations of NRC requirements will be limited to its assertion regarding the reportability of the "most serious" and "potential problem" findings. However, if a broader reading were given to CCANP's response, the effect would be to require Applicants to defend against potentially limitless allegations that the Quadrex findings manifest violations of NRC requirements.* / CCANP should, therefore, be prohibited from litigating the extent to which the Quadrex Report does or does not manifest violations of NRC requirements in the STP design, or design process.

Interrogatories 7-10

In interrogatories 7 through 10, Applicants asked CCANP to specifically identify, inter alia, any alleged errors,

* / In this connection we note the discussion of Issue A of Phase I in CCANP Supplemental answers at 2-3. There CCANP argues generally that "[f]rom the vantage point of Issue A, all acts demonstrating a lack of character or competence, whether remedied or not, are relevant to this proceeding" (emphasis in the original). Regardless of its relevance here, Issue A was not as broad as CCANP claims. For example, it related solely to "the record of HL&P's compliance with NRC requirements." Second Prehearing Conference Order (December 2, 1980). In any event, an identification of CCANP's contentions was a necessary predicate to the consideration of whether they are within the scope of Phase II. Although CCANP made general statements about Issue A, it has not identified any matters beyond the reporting issues addressed above, which it seeks to have addressed in Phase II.

omissions or improper conclusions in Bechtel report EN-619.*/
The substance of CCANP's response is that EN-619 is not a satisfactory disposition of the Quadrex findings, but that it would be impractical to identify the reasons for that conclusion.**/ In its Original answers to Applicants' interrogatories, CCANP also indicated that it wished to litigate those areas where Bechtel disagreed with Quadrex, but failed to identify the areas in question.***/ As a result, Applicants

*/ Applicants' interrogatories at 5-6.

**/ Supplemental answers at 6-7. Although CCANP asserts that Applicants made a "similar" response to an interrogatory from the Attorney General, it fails to recognize that Applicants were not attempting to identify issues to be heard in the Phase II proceeding (as CCANP should be); that it is CCANP which has been making broad allegations of violations of NRC requirements (and has been doing so since November 1981); and that Applicants are entitled to a clear identification of the contentions and the bases therefor, upon which CCANP seeks a Board hearing. Furthermore, Applicants were responding to a more difficult question; namely, the Attorney General's request to identify the reasons most of the Quadrex findings were not reportable. In attempting to prove a "negative," Applicants noted the impracticability of identifying all of the reasons why such findings were not reportable. Nevertheless, their lengthy answer provided extensive information which Applicants believed to be adequate to meet the needs of the Attorney General and responsive to his inquiry. Applicants' Answers and Objections to State of Texas' First Set of Interrogatories to Applicants on Quadrex (August 26, 1983) at 1-2, 22-25. The contrast between Applicants' response to that question, and CCANP's response to interrogatories 7 through 10, is another clear demonstration of CCANP's repeated failure to provide any meaningful specification of its positions.

***/ Original answers at 4.

have been provided no basis upon which to anticipate CCANP's allegations with respect to EN-619. CCANP should, therefore, be barred from challenging the adequacy, correctness, or completeness of EN-619, and should not be permitted to participate in any consideration of EN-619 at the Phase II hearings.

Interrogatories 11-13

In interrogatories 11 through 13, Applicants asked CCANP if it contends that there are significant errors or omissions in NRC I&E Report 82-02, and if so, to identify those errors, and the bases for CCANP's positions.*/ Although CCANP's Original answers were unsatisfactory,**/ and the Board compelled it to respond more fully, CCANP has provided no additional information on these inquiries.***/ Thus, CCANP should not be permitted to contest any aspect of I&E Report 82-02 in the Phase II proceeding.

Interrogatories 14-16

Finally, in interrogatories 14 through 16, Applicants asked CCANP if it contends that there are significant errors or omissions in NRC I&E Report 82-12, and if so, to identify

*/ Applicants' interrogatories at 6.

**/ CCANP argued, essentially, that HL&P's handling of the Quadrex Report should have been treated as a willful failure to file a 50.55(e) report, constituting a Severity Level I violation, and that, accordingly, various sanctions should have been imposed. Original answers at 4. CCANP's assertions regarding section 50.55(e) are addressed in the discussion of interrogatories 1 and 2, above.

***/ Supplemental answers at 7-8.

those errors and the bases for CCANP's positions.* / Although CCANP asserts that there are such errors and omissions, it fails to identify a single one. Instead, it launches upon a tirade chastising the I&E Report as "a masterpiece of NRC obfuscation," and otherwise denigrating the Staff's enforcement efforts. CCANP again explicitly refuses to provide any substantive or specific information in its response, asserting it is "impractical" to do so.** / Since Applicants have not been given a clear specification of CCANP's assertions, or the bases for them, CCANP should not be permitted to litigate or participate in the consideration of any of the conclusions or evaluations in I&E Report 82-12 in Phase II, except to the limited extent addressed in the discussion of interrogatories 1 and 2, above.

II. Conclusion

CCANP's demonstrated disregard for the Board's authority, as well as its obligations as a party to this proceeding, clearly warrants the imposition of sanctions by the Board. The sanctions requested above are necessary to protect Applicants' ability to effectively prepare for the Phase II proceedings, and to preserve their right to be fairly informed

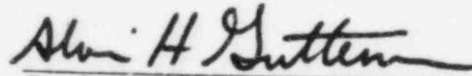
* / Applicants' interrogatories at 7.

** / Supplemental answers at 8.

regarding the issues to be litigated. In addition, unless significant and meaningful sanctions are imposed, it is probable that CCANP will continue its pattern of utter disregard for the Board's orders and Commission requirements.

Accordingly, Applicants request that the Board issue an order limiting CCANP's participation in Phase II to the extent described above. Applicants believe that the relief requested is the least severe sanction available to "mitigate the harm" resulting from CCANP's failure to meet its obligations, and to "bring about improved future compliance."

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Motion for Sanctions Against CCANP" have been served on the following individuals and entities by deposit in the United States mail, first class, on this 6th day of October, 1983.

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