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USNRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)

HOUSTON LIGHTING & POWER)
COMPANY, ET AL.)Docket Nos. 50-498 OL
50-499 OL(South Texas Project, Units 1)
and 2)APPLICANTS' RESPONSE TO
CCANP MOTION FOR
ADDITIONAL TIMEI. Introduction

By motion dated April 6, 1984, Citizens Concerned About Nuclear Power (CCANP) has requested that the Atomic Safety and Licensing Appeal Board (Appeal Board) extend the deadline for filing its appeal brief in the above-captioned proceeding for an additional ninety days.*/ Because CCANP has failed to demonstrate "good cause," pursuant to 10 CFR § 2.711, for the requested relief and Applicants are entitled to expeditious resolution of CCANP's appeal, CCANP's Motion should be denied.

II. Argument

CCANP, in its Motion, makes a number of allegations which it believes support its request for an extension of

*/ CCANP Motion for Additional Time (April 6, 1984)
(Motion).

time. Applicants will address each of these allegations in light of the requirement in 10 CFR § 2.711 that CCANP demonstrate good cause for the requested relief. In addition, Applicants will explain why an expeditious disposition of CCANP's appeal is particularly important under the circumstances.

A. Importance and Uniqueness of the Character Issue

CCANP first argues that because the concept of character has not previously been "directly" addressed in other NRC proceedings and is "central" to this proceeding, it is entitled to an additional ninety days to submit its brief. Motion at 1-2. CCANP fails to explain, however, why the alleged importance or uniqueness of the character inquiry warrants any extension of the briefing time generally provided by the Commission's regulations, let alone the excessive ninety day extension it has requested.

Contrary to CCANP's allegation, the character inquiry which has been conducted in this proceeding is not a case of first impression before NRC tribunals, and CCANP has had an extensive opportunity to examine and analyze the relevant body of law. The Licensing Board requested pre-trial briefs on the "character and competence" issue in early 1981 at its third prehearing conference and such briefs were filed almost three years ago by Applicants, the NRC Staff, CEU (another intervenor who has since withdrawn from the proceeding) and

CCANP.*/ Those Briefs identified and applied a number of decisions, both in NRC proceedings and in other forums, relevant to the character inquiry. Moreover, over 18 months ago, after the record was closed in the proceeding, both the Applicants and the NRC Staff summarized the relevant caselaw once more and applied it to the facts in this proceeding.**/ Although CCANP did not choose to include any significant discussion of the relevant cases in its proposed findings,***/ it was amply aware of the position of the other parties and it has had literally several years available to it to do the necessary research and present its legal position. Obviously, the alleged absence in NRC caselaw of a "direct" consideration of the character requirement does not justify the requested relief.

Furthermore, the fact that the character inquiry is a "central" issue in this proceeding does not by itself explain why additional briefing time is necessary. Obviously, every appellant raises issues on appeal which it believes are sufficiently important that their resolution in its favor

*/ Applicants' Memorandum of Law on Issues Concerning Competence and Character (May 2, 1981); CCANP Brief on "Character" (May 5, 1981); Citizens for Equitable Utilities Prehearing Brief (May 6, 1981); and NRC Staff Memorandum on Standards for Evaluating Managerial Competence and Corporate Character (May 6, 1981).

**/ Applicants' Proposed Findings of Fact and Conclusions of Law (August 6, 1982) at 291-335; NRC Staff's Proposed Opinion, Conclusions of Law, and Order in the Form of a Partial Initial Decision (October 4, 1982 at 12-38.

***/ Citizens Concerned About Nuclear Power, Inc. (CCANP) Proposed Findings of Fact and Conclusions of Law (September 20, 1982).

will change the result reached below, but such alleged importance does not automatically entitle the appellant to additional briefing time.

Under the circumstances, CCANP's reference to the alleged uniqueness and importance of the character issue does not provide good cause for the requested extension.

B. Significant Disagreement Between the Licensing Board and CCANP on the Character Issue

CCANP next alleges that there is a "significant divergence" between its treatment and the Licensing Board's treatment of the character issue, and that therefore CCANP "faces the task of determining what definition, measurement, and standard of character the ASLB does in fact adopt and comparing the Board's explanation of character in the record with CCANP's to determine where CCANP disagrees with the Board." Motion at 3.

Again, CCANP's allegations do not provide good cause for the requested extension. The fact that the Licensing Board disagreed, in substantial measure, with CCANP on the issues in the proceeding can be assumed from CCANP's appeal of the Licensing Board's decision. Clearly, no unusual or extraordinary circumstances warranting the requested relief are demonstrated by this assertion.

Furthermore, the fact that CCANP must review the Licensing Board's decision and compare the Board's conclusions to its own, in order to prepare its appeal brief, is

neither unusual nor extraordinary, and reflects the sort of activity any appellant would undertake in filing such a brief. CCANP has not alleged any reason why its review of the "definition, measurement, and standard of character" adopted by the Licensing Board is unduly burdensome, difficult or time-consuming. In fact, as CCANP specifically noted, the Licensing Board "devoted a separate section [in its decision] to the legal standards for determining character," and its views are thus easily ascertainable by CCANP. Id. at 2. Thus, the fact that CCANP disagrees in material respects with the Licensing Board's decision and its resulting need to evaluate that decision do not provide any basis for departing from established deadlines. In these respects, CCANP is no different than any other party appealing an adverse decision, and no good cause has been demonstrated.

C. Alleged Bias of the Licensing Board

CCANP next argues that the Licensing Board denied it a "fair administrative hearing," and that "research" and "careful scrutiny" of the record and the Licensing Board's reasoning is necessary. Id. at 3. If CCANP's allegation that it has been denied due process is based upon any factor other than the fact that the Licensing Board decided the issues in an unfavorable manner, it has had close to two years since the close of the evidentiary hearing to conduct necessary research and prepare its due process claims.*/

*/ The record in Phase I of the Licensing Board proceeding closed on June 17, 1982. Transcript of Atomic Safety and Licensing Board Hearing, June 17, 1982, at 10,722.

As a result, its allegation that the Licensing Board was biased and denied it a fair hearing does not support its extension request.

D. Length of the Opinion, Record and Pleadings

CCANP next alleges that due to the length of the Licensing Board's decision, as well as the record and pleadings, it requires additional time to prepare its brief. Motion at 4. Although under appropriate circumstances the complexity of the issues or record, or the length of a decision, might be suitable grounds for an extension, such facts do not, in and of themselves, provide good cause for an extension, particularly one of the length requested by CCANP. CCANP has utterly failed to show why the specific circumstances present in this case warrant an extension. It ignores the fact that the Licensing Board's decision (comprised of its opinion and a separate section setting forth its detailed findings) clearly references and cross-references appropriate record citations in support of its decision. Furthermore, CCANP also has the detailed findings of the various parties to assist it in analyzing the record. There is no reason to believe that CCANP need review all of the "roughly 300 exhibits," the "10,000 pages" of transcript, or the "voluminous" pleadings in the case. Id. Clearly, the scope of the information CCANP must review to prepare its brief must be considerably less than the full record which was before the Licensing Board. Moreover, CCANP, of its own volition,

limited its proposed findings to matters covering far less than the entire record, choosing even not to file proposed findings on some of its own contentions.* / Thus, by its own actions, CCANP has narrowed the scope of the matters upon which it may base its appeal.

In any event, CCANP's cataloging of the full scope of the record does not support its request, and the mere fact that the Licensing Board's decision or the record is lengthy does not demonstrate good cause.

E. Alleged Need to Prepare for the Next Phase of the Proceeding Before the Licensing Board

CCANP also argues that the need to prepare for Phase II of the Licensing Board proceeding warrants the requested extension, citing several large documents to be considered, anticipation of a brief to be filed by the NRC Staff, and an alleged expansion of the scope of the Phase II proceeding. Motion at 4. Contrary to CCANP's assertions, the Phase II proceeding should have little or no impact on its ability to prepare its appeal brief in a timely manner. That brief is currently due to be filed by April 23, 1984. At the present time, however, discovery is closed in the Phase II proceeding, there are no pending pleadings or briefs awaiting CCANP's response, the Staff has not yet filed the brief to which

* / See Partial Initial Decision (Operating License)
(Phase I), LBP-84-13 (March 14, 1984) at 28-30.

CCANP may choose to respond,*/ and no prehearing conference or hearing has been set. Thus, there are no matters in the Phase II proceeding warranting CCANP's immediate action or attention.

Furthermore, the consultant's report to which CCANP refers was provided to it more than two years ago, and the reports prepared by Applicants' contractors were all submitted over eighteen months ago.**/ CCANP has, therefore, had an extensive opportunity to review all of the major documents relevant to Phase II.

In addition, CCANP's assertion that the Licensing Board has expanded the scope of the Phase II proceeding will be contested by Applicants in their response to CCANP's recent motion before the Licensing Board to reopen discovery. Motion at Attachment 1. In any event, the Licensing Board has not yet acted on CCANP's discovery motion, and thus any alleged expansion of the proceeding should not require CCANP to expend any substantial resources in the immediate future.

In short, CCANP's allegations regarding the Phase II proceeding do not justify extending the existing April 23 deadline. In fact, just the opposite is true. If the

*/ If the NRC Staff does file its brief before the Licensing Board before April 23, 1984, consideration can then be given as to whether either the schedule for responding to that brief or the schedule for filing briefs before the Appeal Board should be adjusted. Furthermore, granting the requested extension would increase the likelihood that Applicants' response to CCANP's appeal would coincide with its response to the anticipated Staff brief, further burdening Applicants.

**/ The various reports prepared by Brown & Root and Bechtel were served on CCANP in March, May and August of 1982. The NRC Staff's evaluation was provided in January of 1983, over one year ago.

briefing before the Appeal Board is not completed in accordance with the schedules set forth in the regulations, there is an increased likelihood that conflicts will arise between the appeal proceeding and the Phase II proceeding, thus risking unnecessary delays in one or the other.

F. CCANP's "Limited" Resources

Finally, CCANP argues that its resources are limited in that "the burden of the appeal . . . rests primarily on [one] individual," although it admits that "some help is available to [it] on this appeal." Motion at 5. CCANP has not shown why its alleged limited resources provide good cause for the requested extension under the specific circumstances of this proceeding. To the contrary, as indicated above, the current schedule for the next phase of the Licensing Board proceeding places no significant immediate demands on CCANP's time, and CCANP has failed to describe specifically why the scope of the record in the first phase of the proceeding warrants additional briefing time. Thus, there appears to be no undue burden at this time upon CCANP's resources that would prevent the filing of a timely brief.

G. The Importance of an Expeditious Disposition of CCANP's Appeal

The Commission has consistently recognized the importance of conducting proceedings in a timely and efficient manner.^{*/} The 30 day limit for filing briefs in support of appeals was

^{*/} 10 CFR Part 2, Appendix A reflects the Commission's intent that licensing proceedings be conducted "expeditiously" and "without unnecessary delays."

adopted by the Commission in consideration of the public's interest in both an adequate time for preparation of presentation of their concerns, and its interest in having decisions made in a timely manner. 43 Fed. Reg. 17,798, 17,801 (April 26, 1978). This time limit, an expansion of the previous 15-day limit, was adopted in the hope that "these changes will offer sufficient time for improved briefs and less reason for filing requests for additional time." Id. More recently, the Commission reemphasized its commitment to keeping proceedings on schedule:

The Commission expects licensing boards to set and adhere to reasonable schedules for proceedings. The Boards are advised to satisfy themselves that the 10 CFR 2.711 "good cause" standard for adjusting times fixed by the Board or prescribed by Part 2 has actually been met before granting an extension of time.

Statement of Policy on Conduct of Licensing Proceedings, CLI-81-8, 13 NRC 452, 454 (1981). To grant a request for an extension which quadruples the length of time ordinarily allowed for filing of a brief would undermine the Commission's established scheduling policy.

In addition, there are specific reasons why this appeal should be disposed of and this proceeding completed in expedited fashion. First, the Licensing Board decision currently before the Appeal Board for review addresses those issues which were designated for expedited decision by the

Commission in September of 1980.* / Thus, three and one-half years have passed between the time that the Commission ordered the conduct of an expedited proceeding and the completion of that proceeding. Satisfying the Commission's mandate requires that no unnecessary delay in the completion of the proceeding be permitted.

Second, consideration of these issues raised a cloud as to the "character" of Houston Lighting & Power Company, which the Licensing Board's Partial Initial Decision has satisfactorily resolved. However, the pendency of the appeal obviously causes some residual concerns. It is essential to Houston Lighting & Power Company that such concerns be disposed of promptly.

Finally, as discussed above, activity in Phase II of the proceeding will be recommencing in the near future when the NRC Staff files the brief requested by the Licensing Board. It is important to complete the filing of briefs in the appellate proceeding to avoid potential conflicts in the obligations of the parties in the two proceedings.

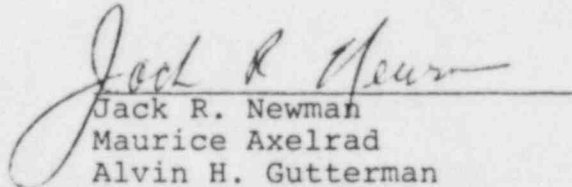
Under the circumstances, Applicants believe that a prompt disposition of CCANP's appeal is particularly important and that CCANP's excessive request for an extension of ninety additional days is unwarranted.

* / Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), CLI-80-32, 12 NRC 281 (198)).

III. Conclusion

CCANP has requested an extension of the period provided to it to prepare and file its appeal brief in this proceeding, but has provided no support for the requested relief. Since CCANP has failed to demonstrate good cause for extending the deadline for submission of its appeal brief, and a prompt resolution of CCANP's appeal in this proceeding is particularly important, CCANP's Motion should be denied.

Respectfully submitted,



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OFFICE OF SECRETARY
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BRANCH

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

Docket Nos. 50-498 OL
50-499 OL

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to CCANP Motion for Additional Time" have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid, or by arranging for delivery as indicated by asterisk, on this 13th day of April, 1982.

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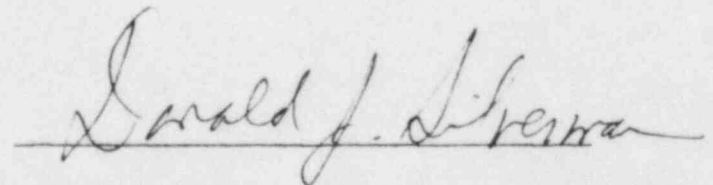
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A handwritten signature in cursive script, reading "Donald J. Liberra", written over a horizontal line.

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