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USNRC
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
LICENSING & SERVICE
BRANCH

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

APPLICANTS' RESPONSE TO
CCANP MOTION FOR
ADDITIONAL DISCOVERY

I. Introduction

By motion dated March 29, 1984, Citizens Concerned About Nuclear Power (CCANP) requested that the Atomic Safety and Licensing Board (Board) grant it an additional ninety (90) days of discovery in Phase II of this proceeding.* / As basis for its Motion, CCANP cites the Board's direction to the NRC Staff to provide a report on safety-related construction activities and QA program implementation at STP since the transition from Brown & Root to Bechtel and Ebasco. Since the Board's directive does not provide the basis for any additional discovery, CCANP has failed to demonstrate good cause for the requested relief pursuant to 10 CFR § 2.711, and its Motion should be denied.

* / CCANP Motion for Additional Discovery (March 29, 1984)
(Motion).

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II. Argument

In its Motion, CCANP argues that the Board's direction to the NRC Staff, in its recent Partial Initial Decision on Phase I of this proceeding,^{*/} to report on HL&P, Bechtel and Ebasco's construction and construction QA performance, "has extended into the second phase of the . . . proceeding the inquiry posed by Issue B." Motion at 1. CCANP asserts that the PID was "the first notice [it] had that the record on Issue B would be extended during Phase II." Id. It argues that further discovery is necessary in order for it to be "adequately prepared to participate in the litigation of this issue. . . ." Id. at 2.

CCANP's Motion, however, is based upon a misinterpretation of the Board's PID and is not supported by a showing of "good cause" for the requested relief pursuant to 10 CFR § 2.711. The PID did not extend or fail to resolve Issue B. The Board stated, in fact, that "Phase I is now complete" and that its decision "addresses and resolves" Issues A through E.^{**/} Instead, the Board simply directed the NRC Staff to provide additional information on HL&P, Bechtel and Ebasco's performance in order to supplement the information already in the record upon which it drew its Phase I conclusions.

^{*/} Partial Initial Decision (Operating License) (Phase I), LBP-84-13 (March 14, 1984) (PID).

^{**/} PID at 6. See also PID at 2b6.

The Board's directive does not mean that Issue B remains unresolved or is in litigation in Phase II. Neither does it imply that a new contention or issue has been admitted in this proceeding. All that the Board has done is provide a mechanism for limited enhancement of the record during Phase II on an issue which was addressed and resolved in Phase I. Such enhancement is limited to the Staff's report, and any comment on or supplement to such report that the parties desire to submit. Since the Board's directive neither continued Issue B in litigation nor admitted a new contention or issue, it obviously does not serve as the basis for any further discovery.

In somewhat similar circumstances, a licensing board denied a request for discovery in Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-81-14, 13 NRC 677 (1981). There, the Board granted summary disposition with respect to all of the admitted contentions in the proceeding but, nevertheless, retained jurisdiction over certain matters related to one of the admitted contentions in order for it to obtain additional information and "rule with finality" on the issues. Id. at 705. Thus, the Licensing Board instructed the parties to provide "reasonably detailed and concrete information on these matters, by affidavits or other means. . . ." Id. at 706. In its subsequent order reaffirming its grant of

summary disposition, the Licensing Board denied a request by the intervenor for a reopening of discovery on the matter over which it had retained jurisdiction. Florida Power & Light Co. (Turkey Point Nuclear Generating Station, Units 3 and 4), LBP-81-16, 13 NRC 1115-16, 1119.

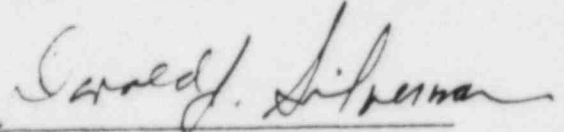
Finally, discovery on "the performance of HL&P, Bechtel, and Ebasco since the transition" would be particularly open-ended and burdensome. Motion at 2. The scope of the requested Staff report will be defined by the Staff's evaluation based upon its inspection and enforcement activities. Should CCANP choose to comment on or supplement that evaluation, it has available to it all STP-related correspondence from HL&P to the NRC, as well as all materials in the NRC public document files, including inspection and investigation reports, notices of violation and responses thereto. There is, therefore, ample information available to assess performance on the Project since the replacement of Brown & Root, and broad-ranging and burdensome discovery by CCANP is neither contemplated by the Board's PID nor necessary.

III. Conclusion

CCANP's request for additional discovery is premised upon its mistaken belief that the Board has extended or reopened the inquiry into Issue B such that there are additional matters, upon which it has not been provided an

opportunity for discovery, which it must be prepared to litigate in Phase II. The Board's request for a report from the NRC Staff does not place a new issue into controversy in Phase II. Furthermore, CCANP has ample information at its disposal to comment on the Staff's report or prepare its own report if it so desires. Thus, CCANP's request for additional discovery is not supported by a showing of good cause and its Motion should be denied.

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Dated: April 13, 1984

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LIGHT COMPANY, and CITY OF
AUSTIN, TEXAS

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to CCANP Motion for Additional Discovery" have been served on the following individuals and entities by deposit in the United States Mail, first class, postage prepaid, on this 13th day of April, 1984.

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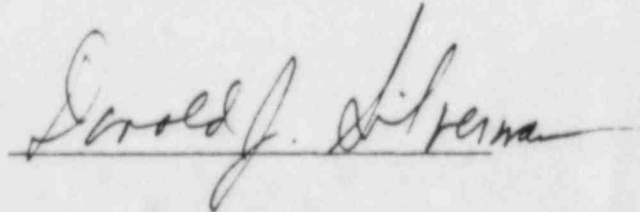
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A handwritten signature in cursive script, reading "Donald J. Silberman", written over a horizontal line.