

D. KETTER
UNAPDUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

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HOUSTON LIGHTING AND
POWER COMPANY, ET AL.
(South Texas Project,
Units 1 and 2)(Docket Nos. 50-498 OL
) 50-499 OL
(
)Citizens Concerned About Nuclear Power (CCANP) Motion for
Reconsideration of ASLB's Memorandum and Order (Ruling on CCANP
Motions for Additional Discovery and Applicants' Motion for
-----Sanctions) dated May 22, 1984-----

On May 22, 1984, the Atomic Safety and Licensing Board in this proceeding issued a memorandum and order ruling on two CCANP motions for additional discovery and on a motion for sanctions by Applicants.

Among the rulings of the Board was a ruling that the Partial Initial Decision in Phase I of this proceeding had foreclosed any further inquiry into either the past lack of character or lack of competence on the part of HL&P as a basis for license denial, except insofar as the failure of HL&P to provide the Quadrex Report to the Board and Commission might be probative of lack of character. Memorandum and Order at 4-6.

CCANP believes that this Memorandum and Order is entirely too sweeping in its exclusion of discovery, evidence, cross-examination, and findings on the essence of the Quadrex Report. The only reason Quadrex was excluded from Phase I was to permit a comprehensive discussion of what happened after HL&P had time to develop remedial measures for the findings of deficiency in the Quadrex Report: the findings themselves were never considered

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irrelevant to the decision to be made in Phase I. Now that delay has become a bar to discovery, introduction of evidence, and the making of findings.

In its Partial Initial Decision, the Board did consider the possibility that a lack of candor or truthfulness could be a character defect so severe as to warrant license denial. PID at 23. Yet the Board forecloses any inquiry as to character stemming from the revelations of the Quadrex Report, other than the circumstances surrounding notification of NRC and the parties about the report. The possibility that evidence would be developed that over a long period of time, not just from May 7, 1981 forward, HL&P kept the Commission in the dark about Brown and Root's and HL&P's inability to design and engineer the project is ignored or rejected. CCANP urges the Board to reconsider whether in light of the PID this possibility can really be ignored or, if rejected, whether the Board has any evidentiary basis for rejecting this possibility.

In making such a ruling, the Board is also assuming that the same causes the Board found to be the reason for earlier lack of competence, i.e. inexperience and long lines of communication, are necessarily the same causes for the lack of competence demonstrated by the Quadrex report. The Board reaches this conclusion based on no evidence whatsoever. The Board assumes that no evidence could be developed to demonstrate any other reason. On what basis does the Board deny this possibility? The Board's assumptions and conclusions without benefit of evidence are unwarranted.

The Board's approach seems illogical in light of the Board's

interest in pursuing the "corrective actions" taken on the Quadrex findings. Precisely how are we going to judge whether the corrective actions followed currently resolve any safety-significant deficiencies revealed by the Quadrex Report if we are not contemplating any inquiry into whether or why the particular deficiency occurred? If we do not know whether the deficiency in fact occurred and if so why, how precisely does the Board propose we judge the adequacy of corrective action? For example, if Quadrex said something was a problem and Bechtel said it was not and therefore no corrective action was taken are we to take Bechtel's word for the truth?

Even on the one question the Board will still entertain - the notification and reportability question - the sweeping exclusion of evidence by the Board could have some effect on the nature of the inquiry and conclusions. Presumably, the Board does consider it possible to make a finding that HL&P should have notified the NRC and the parties of the Quadrex Report either in its entirety or in its particular findings and that at least some of the Quadrex findings were ultimately reportable. Exactly how will the Quadrex Report be proof of notifiable or reportable findings if the report itself is not admitted into evidence for the truth of what it contains? How can the Board determine if a finding was ultimately reportable unless the Board knows whether the finding documents something that in fact happened? Is the Board making an assumption about the willingness of HL&P to stipulate that the Quadrex Report will be admitted into evidence for the truth of what it contains? If so, on what representations

by the Applicant can the Board make such an assumption?

Does the Board consider an NRC finding of safety-significant to be relevant to the notifiability or reportability of a finding? If so, how can the NRC finding be probative unless it is assumed the finding documents something that happened?

These are only a few of the problems and questions raised by the Board's Memorandum and Order of May 22.

The timing of the discovery provided by the Board is another concern. CCANP is given until August 31 to complete its discovery. CCANP's representative will be preparing for the bar examination which occurs in the last week of July through much of that period, but seeks no relief on that point. There is, however, the problem that the Staff is given until August 24 to file a brief on the reportability of the Quadrex Report and the individual findings. The parties will then have 30 days to respond to that brief.

CCANP will therefore have no possibility of conducting discovery knowing the positions of the parties on the only issue the Board seems willing to explore (other than remedial). The Applicants have already refused to answer State of Texas interrogatories on the reportability question, citing the forthcoming briefs as an excuse.

CCANP moves the Board to reconsider its Memorandum and Order of May 22 and alter that Memorandum and Order to provide the following:

1. Discovery not limited as to any aspect of the Quadrex Report.
2. Such discovery to commence after the filing of the

briefs on notification and reportability by all parties or alternatively an order to the Applicants that such questions are to be answered regardless of whether the briefs have been filed or not.

3. No defining of the issues to be litigated until after the discovery and the prehearing conference, i.e. rescission of the Board's limitations on the issues set forth in the Memorandum and Order.

CCANP can appreciate the Board's desire to cut short this proceeding. Certainly there is no enjoyment for CCANP in prolonging this process. However, the Memorandum and Order of May 22 is so restrictive as to the scope of the Phase II proceeding from discovery to conclusion that CCANP feels compelled to protest and seek relief.

Respectfully submitted,



Lanny Sinkin
114 W. 7th, Suite 220
Austin, Texas 78701
(512) 478-7197

Representative for
Intervenor
Citizens Concerned About
Nuclear Power, Inc.

Dated: June 5, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

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

Docket Nos. 50-498 DL
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CERTIFICATE OF SERVICE

I hereby certify that copies of CITIZENS CONCERNED ABOUT NUCLEAR POWER, INC. (CCANP) MOTION FOR RECONSIDERATION OF ASLB MEMORANDUM AND ORDER (RULING ON CCANP'S MOTIONS FOR ADDITIONAL DISCOVERY AND APPLICANTS' MOTION FOR SANCTIONS) DATED MAY 22, 1984 were served by deposit in the U.S. Mail, first class postage paid to the following individuals and entities on the 6th day of June 1984.

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

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

Ernest E. Hill
Administrative Judge
Hill Associates
210 Montego Drive
Danville, California 94526

Mrs. Peggy Buchorn
Executive Director, C.E.U.
Route 1, Box 1684
Brazoria, Texas 77422

William S. Jordan, III, Esq.
Jordan, Weiss & Jordan
2001 S Street, N.W., Suite 400
Washington, D.C. 20007

Pat Coy
5106 Casa Oro
San Antonio, Texas 78233

Brian Berwick, Esquire
Asst. Atty. Gen.
State of Texas
Environmtl. Protection
P. O. Box 12548, Capitol Sta.
Austin, Texas 78711

Robert G. Perlis, Esquire
Office of the Exec. Leg. Dir.
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

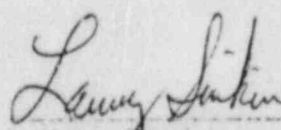
Jack R. Newman, Esquire
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Melbert Schwarz, Esquire
Baker and Botts
300 One Shell Plaza
Houston, Texas 77002

Atomic Safety and Licensing Bd.
U.S. Nuclear Regulatory Comm.
Washington, D.C. 20555

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

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


Lanny Jinkin