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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

'84 JUN 21 P2:53

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

APPLICANTS' RESPONSE TO CCANP  
MOTION FOR RECONSIDERATION  
DATED JUNE 5, 1984

I. Introduction

By motion dated June 5, 1984,\*/ Citizens Concerned About Nuclear Power (CCANP) has requested that the Atomic Safety and Licensing Board (Board) reconsider its May 22, 1984 Memorandum and Order\*\*/ ruling upon two CCANP motions for additional discovery and a motion filed by Applicants for imposition of sanctions against CCANP. CCANP argues that the Board improperly limited the scope of discovery, as well as the issues to be litigated in Phase II of this proceeding, and also takes issue with the timing of the additional period of discovery granted by the Board's Memorandum and Order. CCANP requests that discovery be

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\*/ 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 (June 5, 1984) (hereinafter cited as Motion).

\*\*/ Memorandum and Order (May 22, 1984) (Memorandum and Order).

permitted as to "any aspect" of the Quadrex Report, that the supplementary discovery period provided by the Board be postponed, and that none of the issues to be litigated in Phase II be defined until after completion of discovery and the prehearing conference. For the reasons set forth below, CCANP's Motion should be denied.

## II. Argument

CCANP's first argument is that, by foreclosing further inquiry into either "the past lack of character or . . . competence" of HL&P, the Board has improperly narrowed the scope of the Phase II proceeding. Motion at 1. It argues that it is entitled to take discovery on, and litigate the "essence" or "revelations" of the Quadrex Report, and that in deferring consideration of the Report to Phase II, the Board has somehow improperly modified the scope of inquiry into and litigation of the Report. Id. at 1-2.

CCANP should not, however, be entitled to conduct unlimited discovery. Deficiencies resulting from Brown & Root activities on the Project identified in the Report are not relevant to HL&P's current competence and character to safely operate the STP.\*/ The Board's authorization of

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\*/ The Board correctly concluded that it would not be "useful to litigate" alleged deficiencies in Brown & Root's engineering performance on the Project. Memorandum and Order at 5. Matters relating to HL&P's current competence and character are appropriately addressed by the Board's authorization of discovery on: the various reports and documents reflecting the current record of HL&P, Bechtel and Ebasco on the Project; the circumstances surrounding HL&P's reporting of the Quadrex Report and findings; and the "remedial measures" taken in response to the Report.

discovery on the adequacy of measures taken in response to the various findings should ensure that any concerns relating to the current design of the Project are addressed and resolved.

In addition, CCANP's suggestion that the Board, in deferring consideration of the Quadrex Report to Phase II, has somehow improperly modified the extent to which the Report may be considered is also in error. Motion at 1-2. The Board's only previous pronouncement regarding the extent to which the Report would be considered in Phase II was in its Fourth Prehearing Conference Order<sup>\*/</sup> issued months before the Phase I record had even been completed, and long before it reached conclusions on the Phase I issues. The Board's May 22, 1984 Memorandum and Order is its first effort, in light of the Phase I decision, to begin clarifying what aspects of the Quadrex Report merit consideration in Phase II of this proceeding. The Board properly found that "the Quadrex Report is so broad, and covers topics with varying applicability to safety, that greater particularization is necessary to permit informed inquiry into potentially unresolved safety questions." Memorandum and Order at 4. Thus, the Board has not improperly modified determinations made in Phase I and has simply begun to define, in broad terms, those matters which appear relevant for consideration in the next phase of the proceeding.

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<sup>\*/</sup> Fourth Prehearing Conference Order (December 16, 1981) at 5.

CCANP next takes issue with the Board's limitation of discovery to the "circumstances surrounding [HL&P's] notification of NRC and the parties," arguing that it should not preclude more extensive discovery and litigation in view of 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 & Root's and HL&P's inabilities to design and engineer the project . . ." Motion at 2.

The Board's limitation of discovery to the "circumstances surrounding HL&P's notification of NRC and the parties" provides ample opportunity for CCANP to prepare itself to litigate those reportability issues which may ultimately be admitted in the proceeding. Apparently what CCANP is requesting, however, is that it be allowed to proceed on a fishing expedition based upon the vague possibility that it will discover that HL&P has defaulted on some reporting requirement. Clearly, discovery of this type would not be allowed under normal circumstances, and is particularly inappropriate within the scope of the discretionary additional discovery which the Board granted in its Memorandum and Order. Thus, the Board's limitation of discovery to the circumstances surrounding HL&P's notification of the NRC and the parties regarding the Quadrex Report was appropriate and provides ample opportunity for CCANP to prepare for the Phase II hearing.

CCANP next complains that the Board did not permit additional discovery with regard to HL&P's prior competence, apparently because CCANP does not agree with the Board's view that such evidence would be cumulative. Motion at 2. It argues that the Board has assumed that "the same causes the Board found to be the reason for earlier lack of competence . . . are necessarily the same causes for the lack of competence demonstrated by the Quadrex Report." Id.

This hearing, however, is on HL&P's application for an operating license and the Board is allowing ample discovery on HL&P's current competence to complete the design (as well as the adequacy of actions being taken to correct identified design concerns). HL&P's oversight of B&R engineering prior to the HL&P organization and personnel changes described in the Phase I record would clearly be inadmissible as evidence of HL&P's current competence. Under these circumstances, it is clearly within the Board's authority to determine that additional discretionary discovery will not be granted as to matters not reasonably calculated to lead to the discovery of admissible evidence.

CCANP also argues that it will not be able to effectively litigate the adequacy of the measures undertaken to address any safety significant findings identified in the Quadrex Report, since the Board does not contemplate any inquiry into whether or why particular deficiencies may have occurred. Motion at 2-3. CCANP seems to be concerned that such limited

discovery will require the Board and the parties to accept as "the truth," the views of HL&P and its contractors as to the specifics of any deficiency cited by Quadrex. Id. CCANP is simply wrong.

Under the Board's Memorandum and Order, CCANP will be able to conduct discovery regarding not only the corrective actions being taken, but the bases for such actions (e.g., the interpretation of the Quadrex findings and any related information used by HL&P and its contractors in determining the corrective actions). The Board's Memorandum and Order, by limiting discovery to the adequacy of corrective measures, does preclude an endless and needlessly burdensome examination of Brown & Root's design process, when neither Brown & Root nor its design prior to review by Bechtel is any longer relevant to this proceeding. Accordingly, CCANP will be able to litigate any alleged inadequacies in either the corrective actions or the bases therefor.

CCANP also expresses concern as to whether the Quadrex Report will be admitted into evidence, particularly for purposes of notification and reportability issues. Motion at 3-4. In this connection, the Board's Memorandum of June 11, 1984 (Memorandum) informed the parties that its "plan for litigating the Quadrex Report remedial actions is to assume (as did the Staff) that the various safety deficiencies alluded to in that Report in fact occurred . . . . For that limited purpose [the Board] would be prepared to admit the Quadrex Report into evidence." Memorandum at 1.

While the Staff, as indicated by the Board, stated that it did not attempt to "verify the validity of the Quadrex Report" and that it "assume[d] the findings were valid" for purposes of its review (NUREG-0948, NRC Quadrex Report Review (December 1982) at 5), it is HL&P's belief that such statements only meant that the Staff did not seek to verify independently what Quadrex had found, but focused instead upon the adequacy of Bechtel's analysis of such findings and its remedial actions. Thus, in some instances, based upon the Staff's review of the documentation of the various Quadrex findings, and Bechtel's additional information or insights, the Staff concurred in Bechtel's view that particular findings were mistaken or not as significant as might be inferred from the Quadrex Report itself. See, e.g., NUREG-0948 at 69, 179 and 206.

We, therefore, assume that the Board intends to adopt a similar approach in handling the Quadrex Report at the hearing (as to both the litigation of remedial measures and reportability issues), that the Report will be admitted as evidence of the findings reached by Quadrex, and that additional evidence will be admitted (such as found, for example, in Bechtel's "EN-619: Review of the Quadrex Report") as to HL&P's review and interpretation of the findings, including information pertinent to the accuracy and reportability of the findings.

CCANP also complains that discovery will end before all of the parties are required to file their briefs on the reportability of the Quadrex Report and the individual findings. Motion at 4. It argues that it will not be able to conduct discovery "knowing the positions of the parties,"\*/ and asks either that discovery start after the briefs are filed, or that HL&P be ordered to answer questions on reportability. Motion at 4-5.

CCANP is confused between appropriate discovery regarding factual information and knowledge as to the legal position of other parties. There is no reason why CCANP cannot properly and fully conduct its factual discovery on the basis of its own legal position -- which we assume it has, or it would not be participating in this phase of the proceeding. The briefs called for by the Board will identify the legal positions of the various parties in ample time to prepare for argument at the prehearing conference and for participation in the hearing. There is thus no reason to defer the discretionary additional discovery time provided and delay, still further, an already much delayed second phase.

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\*/ While CCANP indicates that its representative will be preparing for the bar examination during the summer (as it did in its Motion for Deferral of Rulings and Extension of Deadlines (April 20, 1983) prior to last summer), it professes to seek "no relief on this point." Motion at 4. In any event, as the Board itself has indicated, CCANP has been "delinquent" in seeking discovery on a timely basis (Memorandum and Order at 3), and its representative's preparations for the bar exam do not justify additional delay in the "generous" supplemental discovery period provided by the Board. Memorandum and Order at 6.

CCANP's alternative request that HL&P be ordered to answer one of the State's interrogatories is improper and unwarranted. The State did not object to the timing of the answer to which CCANP apparently refers. That answer was deferred since it sought legal conclusions beyond the scope of legitimate discovery in NRC proceedings, and because it, in essence, modified the briefing schedule established by the Board in its June 22, 1983 Memorandum and Order. If CCANP wishes to obtain additional factual information from Applicants (in excess of that already provided to the State), it may direct additional discovery to them, and such factual questions, if within the bounds of legitimate inquiry, will be answered. If CCANP is dissatisfied with HL&P's answers to CCANP's interrogatories (or any refusals to answer), it will then have the normal recourse to the Board.

Finally, CCANP requests that the Phase II issues not be defined until after discovery and the prehearing conference, "i.e., rescission of the Board's limitations on the issues set forth in the Memorandum and Order." Motion at 5. As the Memorandum and Order indicates, the particular matters to be litigated in Phase II will be "delineate[d] more precisely" at the prehearing conference in October. Memorandum and Order at 13. However, it is obviously the Board's intent that such delineation will be within the scope of the issues as already set forth in its Memorandum and Order. We believe that the Board has appropriately identified, in

broad terms, those aspects of the Quadrex Report which should be litigated in Phase II, that discovery should be limited to those broad aspects and that the issues should be further narrowed after discovery and the prehearing conference.\* / NRC Rules of Practice provide for discovery to be conducted only after the contentions of intervenors have been identified and the scope of legitimate discovery has thereby been defined. 10 CFR § 2.740(b); see also 10 CFR Part 2, App. A., § IV. CCANP's vague innuendo and theoretical hypotheses do not justify either broadening the issues or permitting open ended discovery during the additional discovery period granted by the Board.

### III. Conclusion

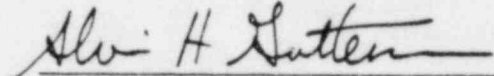
Discovery in Phase II of the proceeding ended many months ago, and CCANP failed to take advantage of the ample, and generally unrestricted opportunity it had to inquire into various aspects of the Quadrex Report. In its May 22 Memorandum and Order, the Board granted CCANP an additional, discretionary period for conducting discovery as to broad

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\* / Furthermore, CCANP's request that none of the issues to be litigated be defined until after discovery and the prehearing conference is particularly inappropriate in light of standard Commission practice. Typically, CCANP would have already been required to articulate specific contentions upon which discovery, and ultimately the hearing, would be based. 10 CFR § 2.714(b). Since no such specification of the issues has yet occurred, CCANP has had the opportunity to take discovery unrestricted by the specifics of any particular contention and has been afforded an extensive amount of time to develop its positions. Thus, its request for further delay in defining the issues to be litigated should be denied.

aspects of the Quadrex Report which the Board identified as the scope of Phase II. The aspects for which discovery was granted are those which the Board reasonably determined may be material and relevant to HL&P's character and competence to operate STP safely. CCANP is not entitled to any further discovery nor to litigation of any broader issues. Thus, for the reasons set forth above, CCANP's Motion should be denied.

Respectfully submitted,



Jack R. Newman  
Maurice Axelrad  
Alvin H. Gutterman  
Donald J. Silverman  
1025 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Finis E. Cowan  
3000 One Shell Plaza  
Houston, Texas 77002

Dated: June 20, 1984

NEWMAN & HOLTZINGER, P.C.  
1025 Connecticut Avenue,  
N.W.  
Washington, D.C. 20036

BAKER & BOTTS  
3000 One Shell Plaza  
Houston, Texas 77002

ATTORNEYS FOR HOUSTON LIGHTING  
& POWER COMPANY, Project Manager  
of the South Texas Project acting  
herein on behalf of itself and  
the other Applicants, THE CITY  
OF SAN ANTONIO, TEXAS, acting  
by and through the City Public  
Service Board of the City of  
San Antonio, CENTRAL POWER AND  
LIGHT COMPANY, and CITY OF  
AUSTIN, TEXAS

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and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to CCANP Motion for Reconsideration Dated June 5, 1984" have been served on the following individuals and entities by deposit in the United States Mail, first class, postage prepaid, on this 20th day of June, 1984.

Charles Bechhoefer, Esq.  
Chairman, Administrative Judge  
Atomic Safety and Licensing  
Board Panel  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

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

Mrs. Peggy Buchorn  
Executive Director  
Citizens for Equitable  
Utilities, Inc.  
Route 1, Box 1684  
Brazoria, TX 77422

Brian Berwick, Esq.  
Assistant Attorney General  
for the State of Texas  
Environmental Protection  
Division  
P. O. Box 12548, Capitol Station  
Austin, TX 78711

William S. Jordan, III, Esq.  
Harmon & Weiss  
1725 I Street, N.W.  
Washington, D.C. 20006

Kim Eastman, Co-coordinator  
Barbara A. Miller  
Pat Coy  
Citizens Concerned About  
Nuclear Power  
5106 Casa Oro  
San Antonio, TX 78233

Lanny Sinkin  
114 W. 7th, Suite 220  
Austin, TX 78701

Robert G. Perlis, Esq.  
Office of the Executive Legal  
Director  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

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

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

Alvin H. Gutter