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RELATED CORRESPONDENCE

NEWMAN & HOLTZINGER, P. C.

DOCKETED  
USNRC

1615 L STREET, N. W.

WASHINGTON, D. C. 20036

202-955-6600

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

JACK R. NEWMAN  
JOHN E. HOLTZINGER, JR.  
HAROLD F. REIS  
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GEORGE L. EDGAR  
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JACOLYN A. SIMMONS  
JOSEPH E. STUBBS  
\*ADM. VA.

ROBERT LOWENSTEIN  
NORMAN A. FLANINGAM  
OF COUNSEL

February 25, 1985

Gary J. Edles, Esq.  
Chairman, Administrative Judge  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. W. Reed Johnson  
Administrative Judge  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Thomas S. Moore, Esq.  
Administrative Judge  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: Houston Lighting & Power Co., et al.  
South Texas Project, Units 1 and 2  
Docket Nos. 50-498 OL, 50-499 OL

Gentlemen:

On Friday, February 22, we received a copy of the February 21 letter from Mr. Sinkin to the Appeal Board. Mr. Sinkin's letter stated that CCANP requested agreement from the other parties to this proceeding for an additional fourteen days until March 8, 1985 in which to file its motion for reconsideration, and that there was no objection from the other parties. Mr. Sinkin's letter of February 22 stated that the February 21 letter should have stated that the NRC Staff took no position on CCANP's request. We

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Atomic Safety and Licensing  
Appeal Board  
February 25, 1985  
Page Two

understand that before the second CCANP letter the Appeal Board granted the unopposed CCANP request.

The background is as follows. On February 20, Jack Newman received a phone call from Mr. Goldstein requesting HL&P agreement to a ten day extension of the time for CCANP to file a Petition for Reconsideration of ALAB-799. Mr. Newman asked when the time for such petitions expired and Mr. Goldstein replied Friday, February 22. On the basis of that representation, I phoned Mr. Goldstein and told him HL&P would not object to a ten day extension.

Applicants would note that they agreed to an extension of 10 days, not 14, but more importantly that they relied on the representation of CCANP that its time for filing would not expire until February 22. Upon review, however, it appears that the last day for filing a Petition for Reconsideration was February 19, and that CCANP's February 21 request for an extension was not timely.

The time for filing a Petition for Reconsideration is "within ten days after the date of the decision." 10 CFR § 2.771(a). Although CCANP apparently seeks to rely on Section 2.710 for an additional five days, the five day extension allowed by the next to last sentence of section 2.710 is not applicable to a Petition for Reconsideration because the time for filing of such a petition runs from "the date of the decision," not "after the service of a notice or other paper." \*/ Therefor, the time for filing a Petition for Reconsideration had expired before CCANP's request to the Appeal Board, and even before its request to HL&P.

Thus, it appears that the Appeal Board's grant of the CCANP request was premised on

1. an incorrect representation of the position of the NRC staff;

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\*/ This interpretation of the rules is in accord with Federal courts' interpretation of the parallel to Section 2.710 in the Federal Rules of Civil Procedure, Rule 6(e). See Sonnenblick-Goldman Corp. v. Norwalk, 420 F.2d 858, 860 (3rd Cir. 1970); Flint v. Howard, 464 F.2d 1084, 1087 (1st Cir. 1972); Merrill Lynch, Pierce, Fenner & Smith v. Kurtenbach, 525 F.2d 1179 (8th Cir. 1975).

Atomic Safety and Licensing  
Appeal Board  
February 25, 1985  
Page Three

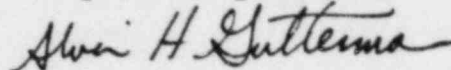
2. an incorrect representation of the period of extension agreed upon by Applicants;

3. agreement of Applicants which was based on an incorrect representation of the deadline for filing; and

4. a request which was itself filed out of time without any showing of good cause for lateness. \*/

For all of these reasons Applicants request that the Appeal Board reconsider its grant of CCANP's request and deny it.

Respectfully submitted,



Alvin H. Gutterman

Of Counsel:

Newman & Holtzinger, P.C.  
1615 L Street, N.W.  
Washington, D.C. 20036

Baker & Botts  
3000 One Shell Plaza  
Houston, TX 77002

Attorneys for HOUSTON LIGHTING & POWER COMPANY, Project Manager of the South Texas Project, acting herein on behalf of itself and the other Applicants, 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.

cc: Certificate of Service

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\*/ A request for extension of time must be filed before expiration of the period sought to be extended. Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-117, 6 AEC 261 (1973); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-144, 6 AEC 628 (1973).

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD FEB 27 P1:48

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

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BRANCH  
Docket Nos. 50-498 OL  
50-499 OL

CERTIFICATE OF SERVICE

I hereby certify that copies of the February 25, 1985, letter to the Appeal Board from A. H. Gutterman have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid on this 25th day of February, 1985.

Gary J. Edles, Esquire  
Chairman, Administrative Judge  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Thomas S. Moore, Esquire  
Administrative Judge  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

Dr. W. Reed Johnson  
Administrative Judge  
Atomic Safety and Licensing  
Appeal Board  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555

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

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

Ray Goldstein, Esq.  
Gray, Allison & Becker  
100 Vaughn Building  
807 Brazos  
Austin, TX 78701-2553

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

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



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

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

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

Lanny Sinkin  
Apartment #304  
3022 Porter Street, N.W.  
Washington, D.C. 20008

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

Alvin H. Gutterman