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

7/22/85

In the Matter of

(

DOCKETED
USNRC

)

HOUSTON LIGHTING AND

(

POWER COMPANY, ET AL.

)

Docket Nos. 50-498 OL

(South Texas Project,

(

50-499 OL

85 JUL 29 A11:13

Units 1 and 2)

)

CCANP MOTION FOR RECONSIDERATION OF ASLB RULING
QUASHING SUBPOENA FOR MICHAEL E. POWELL

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

On July 19, 1985, during hearings being held in Phase II of this proceeding, the ASLB granted Applicants' motion to quash a subpoena for Michael Powell issued previously at the request of CCANP. CCANP hereby moves the ASLB to reconsider the decision to quash the Powell subpoena. CCANP contends that it has the right to call Mr. Powell in this proceeding and that there is no ground for the ASLB to take away that right.

As grounds for the reconsideration CCANP seeks, CCANP offers the following:

1. The decision on the Powell subpoena was made under pressure because all parties were trying to get to the argument over NRC witnesses to be called and time available for the hearing had almost expired. As a consequence, CCANP did not have an opportunity to clearly point out the unique, material, relevant, and admissible testimony CCANP sought from Mr. Powell. CCANP will provide herein a more comprehensive case for not quashing the Powell subpoena.

2. A central concern of Contention 9 in this proceeding is:

"Applicants' failure to notify the NRC (Region IV) of the Quadrex Report, and of many findings beyond those actually reported, within 24 hours" Memorandum and Order (Phase II Hearing on Quadrex-Report Issues) dated February 26, 1985 at 24 (emphasis added).

The Applicants have consistently maintained that Mr. Powell and the IRC reviewed only the three findings which Mssrs. Goldberg, Sumpter, and Robertson identified as potentially reportable. See e.g. Motion of Applicants to Quash Subpoenas of Mr. Cloin Robertson, Mr. Jesse Poston, and Mr. Michael Powell dated July 18, 1985 at 9 ("neither the IRC, not its individual members, reviewed the Quadrex Report to determine its reportability, other than the three items which were reported to the NRC by Mr. Powell on May 8, 1981.")

But on July 19, 1985, during the argument over the quashing of the Powell subpoena, CCANP brought to the ASLB's attention a document that CCANP had marked for identification as CCANP Exhibit No. 99. There was insufficient time for the Board to truly understand the import of this document.

CCANP Exhibit No. 99 is a May 12, 1981 memorandum from Michael Powell to L. R. Jacobi which was to serve as the minutes of the IRC meeting held to review the computer code problem identified by Quadrex.

Tracing the history of notification to the NRC of this finding, Document No. 18, produced on April 19, 1985 by the Applicants in response to the Board's discovery order (February 26 Memorandum and Order, supra), is the Telephone Minutes of Mr. Powell's call to Mr. Crossman. These minutes record that Mr. Powell told Mr. Crossman:

"(2) Concerning computer program (codes) verification - that the verification program lacks visibility to the user whether or not the program versions in use have been verified." Telephone Minutes, May 8, 1981 at 1 (emphasis added).

In the Quadrex Report, at page 4-14, Finding 4.2.2.1

contains the Most Serious findings in the computer code area. The three Most Serious findings expected to seriously impact plant licensability are:

"(a) Numerous programs listed in the Program Status Summary as having heavy usage on STP with no Computer Program Verification Report (CPVR) in place (see Question C/M - 3)

(b) Procedure STP-DC-017 does not require verification of non-safety-related programs; however it is the project application of the code rather than the code itself that really determines whether a safety-related verification is needed. The basis used by B&R for determination of safety-related is not sufficient; for example, some safety-related calculations are not directly related to safety-related systems (see Question R-7). B&R's practice is not typical of industry practice (see Question C/M-8)

(c) Because of the highly modular nature of most computer programs, it is not adequate to assume that an entire code is verified if a portion of that code has not been verified. (see Question C/M-13). The B&R CPVR does not indicate which options of a particular code have been verified."

There are clearly three discrete findings based on separate Quadrex questions and addressing visibility (a), safety-related versus non-safety-related determinations (b), and whether in fact all the programs that should be verified have been verified (c).

The Powell telephone report to Crossman on May 8 refers only to visibility, finding 4.2.2.1(a). The Bechtel Task Force Report, marked for identification as Applicants' Exhibit No. 63, has a table on page 4-9 which records the potentially reportable computer code finding as 4.2.2.1.(a). NUREG-0948, the NRC evaluation of the Quadrex Report, at page 19, records the NRC view of the findings notified to the NRC. Once again, only 4.2.2.1(a) appears in the computer code section. In his prefiled testimony for Phase II, Mr. Goldberg addressed the three findings notified to the NRC and referred to the computer finding as 4.2.2.1(a). See Goldberg Testimony at 28, l. 9; 35, l. 6.

The May 12 minutes of the IRC, however, make it quite clear that the IRC considered "several concerns ... regarding B&R's approach to computer program (code) verification." CCANP Exhibit No. 99 (marked for identification) at 1 (emphasis added). These concerns were:

(1) codes "unverified at the present time" and the possibility these codes were in use, which is 4.2.2.1(c);

(2) "In addition, the verification program lacks visibility," which is 4.2.2.1(a); and

(3) "how computer codes are controlled by B&R procedures with regard to safety-related applications," which is 4.2.2.1(b).

In this area, CCANP seeks to question Mr. Powell on three points:

A. His discussions on May 8 with the HL&P review team as to what would be reported to the NRC and how those reports would be worded.

B. What the IRC did in fact review from the Quadrex Report.

C. How the decisions of the IRC were made regarding potential notification to the NRC of Quadrex findings subsequent to May 8.

3. In its February 26th Order, the Board stated that the current competence of HL&P in regard to 50.55(e) reporting "may represent the most significant of the Quadrex reportability questions raised by CCANP" and that the "level competence of the persons charged with that responsibility, are matters appropriate for adjudicatory consideration in Phase II." Memorandum and Order

at 20.

By examining Mr. Powell's current views on whether the Quadrex Report was dealt with appropriately in relation to 50.55(e), CCANP can develop a record on the point the Board considered to be perhaps the most significant.

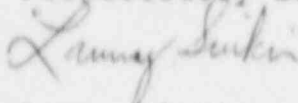
While the Applicants are producing Mr. Wisenburg, Mr. Wisenburg reviews notification determinations made by the IRC. See Wisenburg prefiled testimony ("WT"), at 2, l. 22-24. The central place where evaluations for notification are made is the IRC. WT at 4, l. 19-20. Mr. Powell is chairman of the IRC today, WT at 5, l. 14, just as he was at the time the Quadrex study was being performed, WT at 6, l. 22-23.

Given that Mr. Powell played a unique and significant role in the HL&P established process during January - May, 1981 regarding what would be notified to the NRC pursuant to 50.55(e); that Mr. Powell performed that role on at least one occasion prior to the submission of the final Quadrex Report, see CCANP Exhibit Nos. 94, 95; that he performed that role in meeting with Goldberg, Sumpter, and Robertson on May 8; that he performed that role while reviewing at least five separate findings from the Quadrex Report to determine their notifiability; and that he continues to perform that role today makes Mr. Powell a unique, relevant, material, and necessary witness.

CCANP contends its right to call Mr. Powell is clear and unambiguous. While the NRC Staff may well be concerned that Mr. Powell's testimony may be embarrassing to the NRC, that concern is irrelevant to this proceeding.

For the above and foregoing reasons, CCANP moves the ASLB to reconsider and deny Applicants's motion to quash the subpoena for Mr. Powell.

Respectfully submitted,



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Dated: July 22, 1985
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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOUSTON LIGHTING AND
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(South Texas Project,
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Docket Nos. 50-490 DL
50-497 DL

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CERTIFICATE OF SERVICE

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I hereby certify that copies of CCANP MOTION FOR RECONSIDERATION OF
ASLB RULING QUASHING SUBPOENA FOR M.E. POWELL were served by deposit in
the U. S. Mail, first class postage paid, to the following individuals and
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