

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

7/5/85

DOCKETED
USNRC

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

'85 JUL -8 P12:22

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BRANCHCCANP MOTION TO SEQUESTER WITNESSES

At the prehearing conference held April 30 - May 1, 1985, CCANP placed the Board and the parties on notice of its intention to request sequestration of witnesses "on the issues dealing with the credibility of Phase I testimony" and the notification to the NRC of the Quadrex Report findings. Tr. 11236. The ASLB instructed CCANP to file a written motion after CCANP received the prefiled testimony on June 26, 1985. Sixth Prehearing Conference Order (Further Definition of Phase II Issues) dated May 17, 1985 at 13. CCANP herein moves the Board to grant CCANP's request for sequestration of the following witnesses:

Mr. Jerome Goldberg
Dr. James R. Sumpter
Mr. Loren Stanley
Mr. George Oprea, Jr.
Mr. Richard Frazar
Mr. Cloin Robertson
Mr. M. E. Powell
Mr. Jesse Poston
Mr. Jack Newman
Mr. Maurice Axelrad
Mr. Alvin Gutterman

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Baker and Botts attorneys as yet to be identified.

There is an unusual problem raised by this motion in that the Board has afforded the Applicants an opportunity to move to quash subpoenas for Mssrs. Robertson, Powell, Poston, Newman, Axelrad, Gutterman, and the Baker and Botts attorneys in oral argument during the proceeding. The argument on whether to quash, however, will not take place under the current schedule until the hearings have progressed at least through the first three days in Bay City. Obviously, for CCANP, this schedule is not adequate to achieve the purposes of sequestration. CCANP seeks either a decision on the first day of hearings regarding the calling of and sequestration of the witnesses sought by CCANP (as opposed to produced by the Applicants) or an agreement from the Applicants that Mssrs. Robertson, Powell, and Poston will be instructed to observe the rules of sequestration once the hearing begins at least until the time it is determined that they will indeed be called as witnesses with all the attendant authority given to the Board to take appropriate actions should these witnesses not follow said rules.

As to the sequestration itself, CCANP notes that none of the witnesses for whom sequestration is sought are being called to testify as part of a panel, so there is no question before the Board as to the appropriateness of hearing said witnesses in panels or individually. See Sixth Prehearing Conference Order at 13.

The essence of CCANP's contention regarding the handling of the Quadrex Report is that there was a conspiracy to mislead the NRC about the seriousness of the findings in that report and

withhold the report itself. From this perspective, the witnesses identified in this motion are all alleged co-conspirators, employed by the corporation engaged in the alleged conspiracy, or employed by a partner in the project with an interest in minimizing any actions by the ASLB that would adversely impact the project. CCANP is entitled to the presumption that there might have been a conspiracy and is, therefore, entitled to question these witnesses under circumstances which minimize the possibility of continuing the conspiracy through efforts to harmonize individual testimony. The appropriate mechanism for establishing such circumstances is sequestration.

Even absent the conspiracy allegation, there is still the questions of why only three findings from the Quadrex Report were notified to the NRC, why the entire report was not turned over to the NRC Staff, and why the entire report was not given to the ASLB. Depending on the answers to these questions, the ASLB will decide not only whether NRC regulations were violated but also how those alleged violations reflect on the character and competence of the Applicants. In the exploration of a common decision making by numerous individuals in which their individual thought processes, opinions, and actions will determine what, if any, adverse action the Board will take, CCANP is entitled to question such individuals in isolation to minimize their obvious incentive to tell the same innocuous story.

There is a separate issue of the credibility of the testimony of four of the witnesses in Phase I - Mssrs. Jordan, Goldberg, Frazar, and Oprea. The Board itself raised the issue of apparent inconsistencies in previous testimony. See Memorandum

and Order (Phase II Hearings on Quadrex-Report Issues) dated February 26, 1985 at 19. In this instance, all four witnesses are testifying about the same topics with their credibility being the issue. Sequestration is uniquely suited to the situation where the credibility of a group of witnesses on a common topic is the issue. CCANP is entitled to cross examine these witnesses without their having an opportunity to harmonize their presentations any further than they have done in their prefiled testimony.

Mr. Robertson and Mr. Powell are integral participants in the decision making process referred to as the "handling" of the Quadrex Report. Their testimony is sought to test the credibility of the testimony of other Applicant witnesses. CCANP is similarly entitled to sequestration of these witnesses to minimize their exposure to the testimony of witnesses they may unwittingly contradict.

Mr. Poston is an employee of City Public Service of San Antonio, a partner in the South Texas Nuclear Project. His inclination will be to protect the other witnesses by not contradicting their testimony. To minimize this inclination, CCANP seeks sequestration of Mr. Poston as well.

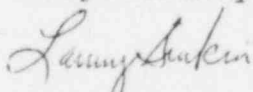
Regarding the attorneys (Newman, Axelrad, Gutterman, and Baker and Botts), prior representations by the attorneys presented their recollection of the role they played in the decisions regarding the Quadrex Report and the Brown and Root removal. CCANP seeks to test those recollections both through the testimony of other witnesses and the testimony of the attorneys. Again to minimize the natural inclination to harmonize testimony, CCANP is entitled to have the attorney absent while the other

witnesses on this subject testify, i.e. Mssrs. Jordan, Oprea, Goldberg, Frazar, Robertson, Powell, and Poston.

While the Applicants may argue that it would be a hardship for these licensing attorneys to be sequestered, CCANP responds that Applicants took the position in the sixth prehearing conference that even if their attorneys were to be called as witnesses, they would have no problem with said attorneys continuing to represent them. Applicants cannot now claim hardship, if the Board decides that as witnesses the attorneys should be sequestered. The Applicants took this risk upon themselves.

Should the Board decide to grant this motion in whole or in part, CCANP seeks clear and comprehensive instructions from the Board to the sequestered witnesses either directly or through their attorneys regarding the limitations imposed by sequestration.

Respectfully submitted,



Lanny Sinkin

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Dated: July 5, 1985
Austin, Texas

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BRANCHCERTIFICATE OF SERVICE

I hereby certify that copies of CCANP'S MOTION TO
SEQUESTER WITNESSES were served by hand
delivery (*) or deposit in the U.S. Mail, first class postage
paid to the following individuals and entities on the 5th day of
July 1985.

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