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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

CCANP MOTION TO WITHDRAW MOTION

On October 16, 1985, CCANP filed its CCANP Motion to Reopen the Phase II Record: III and For Discovery. In said Motion CCANP provided the Board with a document CCANP had received during the Phase II discovery process and again on October 12, in the midst of preparing its findings of fact and conclusions of law for Phase II.

The document was the minutes of a meeting on the morning of September 13, 1981. This document showed clearly to CCANP that Mr. Jack R. Newman, Esquire, had participated as other than counsel in a meeting of the senior management of Houston Lighting and Power. This document also demonstrated that Mr. Newman was present at that meeting. CCANP views Mr. Jordan as having testified Mr. Newman was not a participant and as deliberately omitting to mention Mr. Newman's presence. CCANP views Mr. Goldberg as having deliberately misrepresented Mr. Newman's role in that same meeting.

After review of the document received on October 12 and limited research, CCANP concluded the document had not been produced by Applicants and that it should have been.

Since the role of Mr. Newman was an issue inquired into in

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Phase II about which the Board has reached a preliminary decision opposite from what CCANP contended the minutes showed to be the actual situation, since false testimony is clearly relevant to the central issue of character, and since the existence of the supposedly unproduced minutes raised serious questions in CCANP's mind about the performance of Applicants' counsel, CCANP interrupted its preparation of its proposed findings to bring these minutes immediately to the attention of the Board.

CCANP took the position that these minutes had not been produced in discovery by the Applicants pursuant to a Board order. In its action, CCANP cited a letter of July 2, 1985 as the cover letter on the documents which were produced in response to said order.

On October 23, CCANP learned from NRC Staff counsel Mr. Pirfo that some portion of these minutes had in fact been produced on July 2, 1985. Mr. Pirfo did not have the particular document at the time he called CCANP, but he did direct CCANP's attention to the July 2 letter. Reviewing the July 2 letter, CCANP discovered, to its chagrin, a listing for these same minutes in both draft and final form as item 16. CCANP made an immediate search of its records in Washington, D.C. and could not locate item 16, presumably because documents not introduced into evidence were left in Texas. Based on the entry in the July 2 letter, however, CCANP decided to withdraw its CCANP Motion to Reopen the Phase II Record: III and For Discovery of October 16, 1985 and so informed the Board and parties immediately.

The entry in the July 2 letter, at item 16, includes the phrase "(privileged portions deleted)." After failing to find the

document, CCANP contacted NRC counsel Mr. Perlis, who was working on the NRC response to the CCANP motion and had the document in question, to determine which numbered paragraphs in the two documents were deleted. CCANP is informed that paragraphs 15 and 31 are not deleted, the paragraphs which record Mr. Newman's rendering his opinion on the contractors.

Attempting to reconstruct this event, CCANP offers the following explanation regarding the erroneous nature of its original motion.

The minutes attached to the motion were received in the midst of CCANP preparing its findings, a monumental task. CCANP was already preparing another motion to reopen based on documents received on October 7. Meanwhile CCANP faced a November 4 deadline for the filing of its proposed findings.

When CCANP received the September 12 minutes there was such clear evidence of Mr. Newman's role (paragraph 15), an issue CCANP was quite aware of, that CCANP was absolutely certain CCANP had never seen the document before. Furthermore, checking the documents received into evidence in Phase II revealed these minutes were not part of the record. Nor was this document part of the documents marked for identification but not admitted. CCANP was certain CCANP would have sought admission of this document had the document been produced to CCANP.

CCANP had also particularly struck by the three paragraphs at page B1001 - 2 of the minutes which spoke of "forks in the regulatory road", "Fork 1" and "Fork 2". These phrases were so descriptive that CCANP was certain it would have remembered had CCANP seen the document before.

Finally, CCANP had just received Applicants' Response in Opposition to CCANP Motion Dated September 30, 1985. In said motion, Applicants argued that another document submitted in a motion to reopen precisely on the point of Mr. Newman's role, was not inconsistent with existing testimony. Applicants argued in said response that Mr. Newman was not part of the decision making team. Applicants cited the section of the transcript CCANP already knew about wherein Mr. Jordan testified that he, Mr. Oprea, and Mr. Goldberg were the decision making team on the morning of September 12 and which omitted to mention the presence of Mr. Newman at that meeting. Since the document clearly showed Mr. Newman was present and did participate in the decision making, this Applicant response only reinforced the suspicion that Applicants had withheld the minutes of that meeting from discovery.

In preparing the motion, CCANP's representative simply picked up the reference to the July 2 letter from the other CCANP motion to reopen already written without actually looking at the July 2 letter. CCANP's representative was sure these minutes would not be referenced in that letter and was hurrying in order to return to the preparation of the proposed findings of fact. Mr. Sinkin did perform an inadequate attempt to learn if the document had been produced (as Mr. Pirfo can confirm), but in his rush to return to the proposed findings, CCANP's representative failed to simply look at the July 2 letter. This obviously was a careless act, particularly in light of the seriousness of the allegations contained in the motion. For that error, CCANP apologizes to the Board and parties.

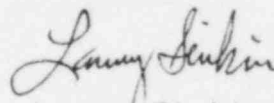
Since the entry is so chronologically obvious and since CCANP did cite to the letter, CCANP trusts that the failure to have looked at the letter is equally obvious. While CCANP cited other documents to that letter, the citations were from the identifying marks CCANP had placed on them when they were accepted into evidence.

Since CCANP now knows that the relevant and discoverable parts of these minutes were produced in discovery, the part of CCANP's motion to reopen that suggests a deliberate withholding of discoverable information by Applicants' counsel is in error. For this error, CCANP apologizes to the Board and parties, particularly counsel.

Furthermore, since CCANP had the document from discovery at the time Mr. Jordan testified in Phase I and did not introduce that document as impeachment, there was certainly no obligation for Mr. Newman to impeach his own witness, as the CCANP motion to reopen implies there was. For this implication, CCANP sincerely apologizes to Mr. Newman.

For the above and foregoing reasons, CCANP moves to withdraw its CCANP Motion to Reopen the Phase II Records and For Discovery.

Respectfully submitted,


Lanny Sinkin

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CERTIFICATE OF SERVICE

I hereby certify that copies of CCANP'S MOTION TO WITHDRAW
CCANP MOTION TO REOPEN: III AND FOR DISCOVERY were served by hand
delivery (*) or deposit in the U.S. Mail, first class postage
paid to the following individuals and entities on the _____ day
of October 1985.

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