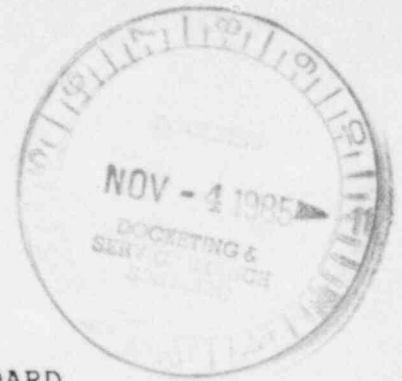


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

APPLICANTS' RESPONSE IN OPPOSITION  
TO "CCANP MOTION TO REOPEN  
THE PHASE II RECORD: II"

In the second of a continuing stream of motions, 1/ on October 16, 1985, CCANP filed the "CCANP Motion to Reopen the Phase II Record: II" (hereinafter "Motion II"). It asks the Board to reopen the Phase II record to admit four documents: the typed versions of notes taken by Mr. Thrash as Secretary at STP Management Committee meetings held on December 4, 1980 and February 19, 20 and March 19, 1981 (designated by CCANP as Exhibits 1 through 4, respectively). The Board is by now familiar with the practice of the Secretary in first taking notes of Management Committee meetings and then preparing the minutes, the sole document circulated to and approved by the members of

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1/ CCANP's first motion to reopen the Phase II record was filed on September 30, 1985 and denied by the Board on October 16, 1985. Its third motion ("Motion III") was filed on October 16, 1985; CCANP's representative has informed Applicants' counsel that it is being withdrawn.

the Management Committee. 2/ The minutes of three of the meetings which are the subject of this Motion -- all but those of the December 4, 1980, meeting which preceded initiation of the Quadrex review -- are already of record in this proceeding. 3/

The essence of Motion II is that Exhibits 1-4 allegedly show a "direct link in the minds of HL&P senior management between the commissioning of the Quadrex Report, the Phase I operating license hearings, and the ultimate licensability of the plant." Motion II at 5-6. CCANP's argument is apparently twofold. First, it contends that Applicants gave false or misleading testimony as to the purpose of the Quadrex review and as to whether they viewed the matters examined by Quadrex as relevant to the Phase I issues. Id. at 7. Its second argument is that the purpose of the Quadrex Report was to establish the "ultimate licensability" of the STP, and that it "was not turned over to the ASLB because the Report would have threatened the licensability of STNP. . . ." Id. at 6.

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2/ Tr. 14102-03 (Oprea); Tr. 14224-34 (Poston); Tr. 12659 (Goldberg); Affidavit of Charles G. Thrash, dated September 4, 1985.

3/ To the extent that CCANP again implies that there is something nefarious about the fact that the minutes of the meetings are not coextensive with the Secretary's notes (see footnote at Motion II, p. 5), it is simply in error. As explained at the hearing, the minutes have a specific purpose and are neither intended nor need to contain a summary of all dialogue at the meeting. See record citations in note 2, supra.

CCANP's charges are totally without merit and are supported only by its own mischaracterization of the Phase II record and of the four documents in question. To the extent that those documents contain any information relevant to the Phase II hearings, it would at best be cumulative, would not modify the result that would otherwise be reached by the Board and, therefore, furnishes no basis for reopening of the Phase II record. 4/

Motion II should be summarily denied. 5/

#### ARGUMENT

A. CCANP's basic argument concerning the linkage between commissioning of the Quadrex review and the Phase I hearings is that "if the Quadrex Report was commissioned specifically to be able to answer expected questions in the Phase I operating license hearings," then "the Applicants viewed the

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4/ Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1979); Commonwealth Edison Co. (Byron Nuclear Power Station, Units 1 and 2), LBP-83-41, 18 NRC 104, 108 (1983).

5/ Motion II could also be denied as untimely. As CCANP acknowledges, it could have obtained Exhibits 1-4 during the discovery which it chose not to pursue. Motion II at 6, 8. "Parties to an adjudicatory hearing are under an obligation to use their best efforts to discover relevant information and present it to the Board in accordance with the hearing schedule." Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), LBP-81-59, 14 NRC 1211, 1498 n.174 (1981), affirmed, ALAB-698, 16 NRC 1290 (1982). CCANP's failure to do so renders its Motion untimely. Id. at 1497-98. Although CCANP argues that the motion raises matters so grave that the timeliness criterion should be set aside, it is actually nothing more than a collection of stray impressions forged together by CCANP's imagination. Motion II could thus be dismissed solely on the grounds of untimeliness, but, as discussed herein, there are more compelling reasons to deny it.

outcome of the study as relevant to the issues in those hearings." Motion II at 6. CCANP's argument, however, is faulty both in its basic premise and in its resulting conclusion.

CCANP's contention that the Quadrex review was commissioned solely, or in substantial part, in order to provide a basis for testimony on issues under consideration in the Phase I hearing is not supported by either the Phase II record or the four proffered exhibits.

The Applicants have testified that the review was undertaken primarily to obtain an objective assessment of B&R's nuclear engineering and design activities and to judge what improvements were needed to successfully complete the work. 6/ Mr. Goldberg further testified that he expected the engineering review to be helpful in discussions with regulatory authorities, such as the NRC, including the Licensing Board. 7/ Goldberg, ff. Tr. 11491, at 4-5; Tr. 11582-84 (Goldberg). See also Tr. 12763

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6/ Goldberg, ff. Tr. 11491, at 4-5, 6-7; Tr. 11690-91, 12600-02 (Goldberg); Oprea, ff. Tr. 14095, at 2-3; Tr. 12760-61 (Sumpter). See Applicants' Proposed Findings of Fact and Conclusions of Law, Phase II, Sections VII.2 and VII.3 (September 30, 1985). See also CCANP Exhibits 73, 87, 98, 122. Although CCANP suggests that Applicants' position is "that the purpose of the Quadrex study was simply to examine B&R's ability to meet the engineering schedule . . ." (Motion II at 7), Applicants' testimony regarding the purposes of the Quadrex review was not nearly so narrow.

7/ As the Phase II record shows, in his 1982 statement in the course of the NRC investigation of CCANP's allegation of a "conspiracy" to withhold the Quadrex Report, Mr. Goldberg pointed out that a purpose of the Quadrex review was to enable him to respond to any questions regarding the status of design and engineering activities at STP. CCANP Exh. 87 at 1.

(Sumpter).

While CCANP apparently contends that the exhibits -- particularly Exhibits 1 and 3 8/ -- demonstrate that the latter consideration was the motivation for the Quadrex review, neither exhibit supports that claim. Exhibit 1, the notes of the Management Committee meeting of December 4, 1980, shows that the discussion of undertaking the Quadrex review came up incidentally in response to a question and was obviously not a focused presentation on the reasons for the contemplated review. But even in those notes the review is mentioned in the context of concerns about the status of B&R engineering (e.g., "Goldberg's Nov[ember] report on 'going slow' in engineering") and the need for an "overview" by more experienced engineers; and the notes reflect, in the background, Mr. Goldberg's concern about how HL&P would "know" that B&R engineering was correct. Motion II, Exh. 1 at 2052-3. 9/ Exhibit 3 is to the same effect; namely, that the purpose of the Quadrex Report was "to obtain an independent review of B&R engineering." The reference to the hearing arises

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8/ Exhibit 2, the notes of the February 19, 1981 meeting, also mentions the credibility of Quadrex "in hearing," in the course of a discussion about the schedule of the review and the interface between B&R and Quadrex. The remark about the hearing was clearly not an explication of the purpose of the review, but only a side comment. Motion II, Exh. 2 at 81037.

9/ If the purpose of the Report had been to prepare for the Phase I hearing, it would clearly have had an entirely different structure (e.g., some discrete discussion of the adequacy of quality assurance activities). This is clearly not the case. Moreover, the proffered exhibits contain no suggestion that the Quadrex review would address quality assurance.



in the context of the schedule of the report and is entirely consistent with Mr. Goldberg's desire to have the review completed in the event engineering questions arose at the hearing.

It is apparently CCANP's position that if the Quadrex review was conceived, in any way, with the possibility in mind that engineering questions might arise at the hearing, it was per se deemed by Mr. Goldberg as relevant to the issues in Phase I. That is both an absurd and unsupported conclusion.

Exhibits 1 and 3 simply indicate that months before the Phase I hearings began, individuals who were unfamiliar with the precise issues to be heard in Phase I 10/ were sufficiently aware of the breadth of inquiries permitted at NRC hearings that they conceived that questions on engineering could come up. As Mr. Goldberg explained at the Phase II hearing, he realized that the Board has "wide latitude" as to the questions it may ask, and, he believed that an additional or "side benefit" of the review was that it would provide information if "any questions surfaced regarding any probing issues on engineering." Tr. 11582-84 (Goldberg). That an official with both construction and engineering responsibilities would take steps to be prepared for that possibility is hardly indicative of a determination with respect to the scope of the issues to be litigated in Phase I.

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10/ The Board's order delineating Issues A-F (the Second Prehearing Conference Order) was not issued until December 2, 1980, only two days before the December 4, 1980, meeting of the STP Management Committee.

Thus, the statements in Exhibits 1 and 3 are consistent with Applicants' testimony both as to the basic purpose of the Quadrex review and as to the potential value of the review if any engineering questions were to arise at the hearing, and do not provide any basis for CCANP's allegations that Applicants' testimony was "intentionally false or misleading." Motion II at 1. 11/

B. CCANP apparently views Exhibits 2 and 4 as containing information supporting its second argument, i.e., that the purpose of the Quadrex review was to establish the ultimate licensability of STP and that it was not turned over to the Board because it threatened licensability. The notes of the February 19, 1981 meeting attribute to Mr. Goldberg a statement to the effect that in the hypothetical event of an "adverse audit" the results would be disclosed to the Board and the solution explained. Motion II, Exh. 2 at 81037. The notes of the March 19, 1981 meeting portray another speculation by Mr. Goldberg concerning possible adverse outcomes of the Quadrex review, including a "worst case" scenario where the STP could not be licensed. Motion II, Exh. 4 at 81066. Accordingly, all that the cited statements reflect is speculation that the Quadrex review might identify deficiencies in B&R's engineering work that would

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11/ Applicants believe CCANP's repeated allegations of perjury go beyond the bounds of permissible zealous advocacy and constitute an unwarranted and impermissible attempt at character assassination. This matter will be addressed in a separate pleading addressing CCANP's Motion III, after review of CCANP's withdrawal thereof.

be reportable to the NRC, including the possibility of identifying basic design deficiencies that might be so significant as to threaten licensability.

As Mr. Goldberg testified, however, the findings of the Report did not, in fact, indict the basic design, identified only a few reportable deficiencies (which were, of course, reported to the NRC, with copies to the Board and parties), and basically confirmed only that B&R lacked the resources to successfully complete the engineering. <sup>12/</sup> Testimony of others is in accord. <sup>13/</sup> Clearly, it is only the actual content of the Quadrex Report, and not preliminary speculation as to the eventual findings, which is in any way germane to the question of whether the Report should have been furnished to the Board. Since Exhibits 2 and 4 contain no information concerning the actual Quadrex review or its results, they are plainly irrelevant to this issue.

#### CONCLUSION

CCANP has failed to meet its heavy burden in showing that Exhibits 1-4 contain material and significant information that would alter the result the Board would reach in their absence. To the extent that CCANP seeks admission of Exhibits 1 and 3 as evidence that one of the purposes to be served by the

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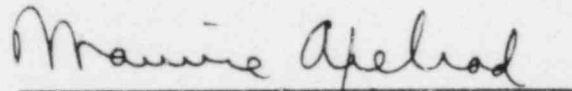
<sup>12/</sup> Goldberg, ff. Tr. 11491, at 19-21, 34-38, 55.

<sup>13/</sup> Bernsen/Lopez, ff. Tr. 13441, at 107; Stanley, ff. Tr. 13047, at 4; Tr. 14633-34, 14729-36 (Robertson); Tr. 12854-55 (Sumpter).



Quadrex review was to provide information that could be used to respond to potential questions regarding engineering by the NRC and other regulatory authorities, they are merely cumulative. They do not diminish the thrust of the closed Phase II record that the essential purpose of the Quadrex review was to ascertain the status of engineering and B&R's capability to complete the work. Exhibits 2 and 4, containing only speculation as to possible outcomes of the Quadrex review, are barren of any information on the Quadrex review or its results and have absolutely no bearing on any issue in this proceeding. Therefore, Motion II should be denied in all respects.

Respectfully submitted,



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Service Board of the City of  
San Antonio, CENTRAL POWER AND  
LIGHT COMPANY, and CITY OF  
AUSTIN, TEXAS

UNITED STATES OF AMERICA  
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COMPANY, <u>ET AL.</u>	)	50-499 OL
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(South Texas Project, Units 1	)	
and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the letter dated October 31, 1985 to the members of the Atomic Safety and Licensing Board from Maurice Axelrad and of the enclosed Applicants' Response in Opposition to "CCANP Motion to Reopen the Phase II Record: II" have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid, on this 31st day of October, 1985.

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