

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

2/21/86

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

CITIZENS CONCERNED ABOUT NUCLEAR POWER, INC. (CCANP)  
MOTION TO REOPEN THE PHASE II RECORD: V AND  
FOR BOARD ORDERED PRODUCTION OF DOCUMENTS BY APPLICANTS

I. BACKGROUND AND INTRODUCTION

On October 16, 1985, Citizens Concerned About Nuclear Power, Inc. (CCANP) filed its Motion to Reopen the Phase II Record: II ("Motion II"). In Motion II, CCANP brought four documents to the attention of the Licensing Board. These documents were notes of various STNP Management Committee meetings during which a third party engineering review of Brown & Root was discussed. This review was ultimately conducted by the Quadrex Corporation.

In Motion II, CCANP contended that the four documents contained evidence that Applicants made material false statements and omissions in their prefiled testimony for Phase II and gave intentionally false or misleading testimony during the Phase II hearings. Motion II at 2 - 5. The essence of the allegation was that the notes in question recorded that the Quadrex study had in fact been commissioned for the Phase I licensing hearings, that Applicants had then deliberately withheld the existence of and the substance of the final report from the Licensing Board, and that Applicants had testified falsely as to the purpose for commissioning the report.

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On November 14, 1985, the ASLB reopened the Phase II record to admit three of the four documents supplied by CCANP and to take additional testimony. See Memorandum and Order (CCANP Motions II and III to Reopen Record), LBP-85-45, dated November 14, 1985.

On December 5 and 6, 1985, the Board convened the reopened Phase II hearings. See Tr. 15399 - 15710.

The Board has not yet issued its decision in Phase II, which presumably is to include its decision on the evidence taken in the reopened hearings.

On January 17, 1986, CCANP filed its Motion to Reopen the Phase II Record: IV; For Discovery; and To Suspend Further Activity in Phase III ("Motion IV"). In said motion, CCANP provided new evidence that Applicants commissioned the Quadrex Report in order to prepare for the Phase I licensing hearings. This evidence consisted of excerpts from the deposition of Mr. Eugene A. Saltarelli, chief engineer for Brown & Root, and a memorandum prepared by Mr. Saltarelli, both of which indicated clearly that the Quadrex Corporation was hired to prepare for the licensing hearings.

In their response to CCANP's Motion IV, Applicants provided an affidavit from Mr. Goldberg (but not Mr. Saltarelli) which reiterated Applicants' position that the Quadrex review was not "performed in order to prepare for the ASLB hearing." Applicants' Response to "CCANP Motion to Reopen the Phase II Record: IV; For Discovery and to Suspend Further Activity in Phase III" dated February 3, 1986, Attachment A at 2.

CCANP now has additional evidence that Applicants did

commission the Quadrex study to prepare for the 1981 Phase I ASLB hearings.

Also in response to Motion IV, Applicants' counsel attempted to portray Mr. Saltarelli's statements as "fragmentary glimpses of conversation," *Id.* at 4, to characterize Mr. Saltarelli's discussions of the operating license hearings in the context of the Quadrex study as "a minor aspect" of his memorandum, *Id.* at 5, and to interpret Mr. Saltarelli's references to operating license hearings as referring to such hearings in general, not Phase I of this proceeding. *Id.* CCANP now has additional evidence that these arguments are nothing more than an attempt to create ambiguity where none exists.

On February 14, 1986, CCANP received notice of an additional deposition which would support CCANP's contention that the Quadrex Corporation was hired by Applicants in order to prepare for the 1981 Phase I licensing hearings. On February 15, CCANP requested a cooperating Austin organization to perform the necessary research on an expedited basis to confirm the existence and content of said deposition. On February 17, CCANP received part of the deposition. On February 21, CCANP requested and received additional pages completing the relevant part of the deposition.

This new documentation goes directly to the issues in the reopened Phase II hearings and supports CCANP's position as to the purpose for the hiring of the Quadrex Corporation. The new evidence corroborates CCANP's contention as to the meaning of the notes of the STNP Management Committee submitted in Motion II and the meaning of the Saltarelli deposition excerpts and Saltarelli

memorandum submitted in Motion IV. The new evidence is, therefore, new and significant proof of false and misleading testimony by Applicants senior management. CCANP moves the Board to reopen the Phase II record to admit this document.

Furthermore, CCANP considers this document new and significant evidence regarding the following issues in this proceeding:

1. Applicants' failure to provide copies of the Quadrex Report to the ASLB.

2. Applicants' failure to mention the Quadrex review or Quadrex Report in their prefiled or cross examination testimony in Phase I of this proceeding.

3. The credibility of Applicants' prefiled and cross examination testimony in Phase II of this proceeding.

4. The existence of a conspiracy among HL&P senior management, and perhaps others, to deliberately mislead the ASLB regarding the purpose for commissioning the Quadrex investigation and regarding Applicants' view of the seriousness of the Quadrex findings.

5. Applicants' failure to report more than a few of the Quadrex findings to the NRC Staff or to turn over the entire report to the NRC Staff.

6. Applicants lack of character as an independent and sufficient basis for denial of the operating license applications.

This document also raises questions concerning the role of Applicants' counsel in this proceeding.



## II. DISCUSSION

The new document, attached hereto as Document 1, is an excerpt from a deposition of Mr. Joseph W. Briskin. Mr. Briskin served as head of the Applicants Task Force responding to the Order to Show Cause. The deposition was taken on January 30, 1985.

In his deposition, Mr. Briskin testifies that Mr. Goldberg was concerned about the quality of Brown and Root's engineering and about whether the Project would be licensed if Brown and Root continued on the Project. Document 1 at 399, L.3 - 15. Mr. Briskin testifies that his discussion with Mr. Goldberg was at a dinner also attended by Mr. Oprea, Mr. Barker, and Mr. Williams in the summer of 1981. Id. at 398, L. 9 - 23.

Part of the basis of Mr. Goldberg's licensing concern, according to Mr. Briskin, was the opinion of Mr. Cloin Robertson. Id. at 399, L.16 - 23. Mr. Briskin testified that it was his understanding that Mr. Goldberg's concerns about the quality of Brown & Root's engineering work and about whether the Project might not be licensed, if Brown & Root remained on the job, also stemmed in part from the Quadrex Report. Id. at 401, L.4 - 24. \*/

Mr. Briskin further testified that he had always supposed the Quadrex Report would be turned over to the NRC

"since Mr. Goldberg had sought to have that report made to back up his testimony before the ASLB that was expected in '81. And I'd just pre-suppose [sic] that it would be submitted as backup."

Id. at 402, L.21 - 403, L.4.

Testifying as to his understanding regarding why the Quadrex

\*/ Compare with Tr. 15402, L.1 - 24 (Jordan).

study was commissioned, Mr. Briskin stated:

"In October - either in October or shortly after Mr. Goldberg came on board, and we discussed the Show Cause and the ASLB Hearings that were planned for April of '81, Mr. Goldberg felt, at that time, that he was going to be on the stand before the ASLB and, at some point in time, he would, more than likely, be asked to testify as to his opinion of the quality of the design. And he felt that, in order to do that, he needed to bring in an outside consulting group who had the type of skills that could determine the quality of the design, and chose Quadrex. I don't know that he, personally, chose Quadrex, but Quadrex was chosen to investigate the design and to give him a report."

Id. at 403, L.8 - 20. \*/

Later in the deposition, the attorney questioning Mr. Briskin asks the following question:

"Did Mr. Goldberg tell you whether the Quadrex report accomplished what he desired, which was to have an independent review of the engineering design that he could present to the ASLB?"

Id. at 410, L.15 - 18.

At this point, the attorney for Houston Lighting and Power, Mr. Finis E. Cowan, objects to the question as misstating the witness' prior statement. Mr. Cowan corrects the questioner by stating:

"What the witness testified was that Mr. Goldberg thought he would be questioned about the issue and wanted information."

Id. at 410, L.22 - 24.

The questioner then has Mr. Briskin confirm that Mr. Goldberg's view of the Quadrex study was that

"he would have an independent review of design made so that he could state an opinion on the quality of the design should he be asked by the ASLB."

Id. at 411, L.15 - 18.

\*/ Compare with Tr. 15402, L. 25 - 15403, L. 6 (Jordan) and with Tr. 15667, L.10 - 15668, L.9 (Barker).

### III. MOTION TO REOPEN

The Briskin deposition provides significant evidence that:

1. the Quadrex Corporation study was to be a study of the quality of Brown & Root's design and engineering work (as opposed to a study to see if Brown & Root engineering could support the construction schedule) and, therefore, relevant to every Issue in Phase I of this proceeding;

2. Mr. Goldberg sought such a study to provide him a basis for testifying as to the quality of Brown & Root's engineering specifically in the 1981 Phase I licensing hearings;

3. Shortly after receipt of the Quadrex Report, Mr. Goldberg expressed the belief that the Project might never be licensed if Brown & Root remained as architect-engineer;

4. Mr. Goldberg's belief regarding denial of an operating license was based on the opinion of Mr. Cloin Robertson, a primary reviewer of the Quadrex Report, and on the Quadrex Report itself;

5. all testimony and pleadings in this proceeding to the contrary are deliberate misrepresentations of the truth made to the Board and parties;

6. the Board's findings on character in its Partial Initial Decision (Phase I), which were specifically subject to change based on information regarding the substance and handling of the Quadrex Report, should in fact be changed because said findings relied on positive findings regarding Applicants' honesty and candor; and

7. Applicants' counsel was aware that Applicants' senior management was testifying falsely before the Board and made no

effort to correct said testimony but, instead, filed pleadings based on said testimony, repeating said testimony, and containing arguments embracing said testimony.

Mr. Briskin's deposition confirms CCANP's allegations as to the meaning of the documents admitted to the reopened proceeding as Applicants' Exhibits 79, 80, and 81 (the Thrash notes) and of the documents submitted accompanying Motion IV (the Saltarelli deposition excerpts and memorandum) and contradicts the Applicants' position on these same matters.

This new evidence supports CCANP's allegation of a continuing conspiracy on the part of Applicants to mislead the NRC and the parties to this proceeding regarding the investigation conducted by the Quadrex Corporation and regarding the Quadrex Report itself.

Given the significance of this document and the gravity of the issues to which this document is material and relevant, reopening the Phase II record to admit these documents is crucial to any decision to be reached by the Board in Phase II of this proceeding.

#### IV. LEGAL STANDARDS FOR REOPENING

The standards for reopening have been consistently stated in this proceeding, most recently in the Board's Memorandum and Order (CCANP Motion II and III to Reopen the Record), LBP-85-45, dated November 14, 1985. In essence, three criteria must be satisfied:

1. The motion must be timely filed, although there is also precedent for reopening the record where the matter presented is of such gravity that lack of timeliness is outweighed by the need

to render a fair and meaningful decision, Id. at 5 - 11;

2. It must address a significant issue; and

3. It must demonstrate that the information sought to be added to the record might potentially alter the result the Board would reach in its absence. Id. at 5.

1. Timeliness - The material provided in Motion IV and the instant motion is held in a voluminous document room in Austin, Texas under the control of Houston Lighting and Power Company. The document room serves as part of the discovery produced in dockets before the Public Utility Commission of Texas. CCANP is not a party to said dockets.

When materials in the voluminous document room possibly relevant to this proceeding have been brought to CCANP's attention, CCANP has requested a party to the PUC proceedings to find, copy, and provide to CCANP said materials. Receipt of the materials depended on the availability of personnel from the cooperating organization and the availability of the document room. All of the Saltarelli materials presented to the Board in Motion IV, for example, were not brought to CCANP's attention, and key pieces of the deposition had to be researched in order to identify the memorandum and complete the context of the deposition pages CCANP did receive initially. As soon as possible after receipt of the complete documentation, CCANP filed its motion to reopen.

The litigation between the STNP partners and Brown & Root generated more than three million pages of discovery. CCANP is represented by pro bono counsel with very limited resources to cover litigation expenses. Obviously, it would be unrealistic to

expect CCANP to examine such a voluminous amount of material, even were all such material available. Simply to review these documents for additional 50.55(e) reports, Applicants spent three months preparing for the review and intend to spend seven months and 26,000 person hours to perform the review. See Letter to Robert D. Martin from J. H. Goldberg, ST-HL-AE-1346, dated August 30, 1985.

At the same time, Applicants' counsel conducting the discovery in the Brown & Root suit is also counsel in this proceeding. They are undoubtedly familiar with both the materials developed in discovery and the issues in this proceeding.

This proceeding is a license application in a predominantly self policing regulatory system. Petition for Emergency and Remedial Action, CLI-76-22, 4 NRC 400, 418 (1978). As applicants for a privilege Applicants should be expected to demonstrate a candor, honesty, and forthrightness in the course of the application process that will support an ASLB prediction of similar behavior if licensed.

What we find in this proceeding is that Applicants' behavior in failing to provide the Quadrex Report to the ASLB raised a serious question as to Applicants' character. Once that contention was accepted into this proceeding, Applicants were not forthcoming with all the evidence upon which the Board could decide that issue. Obviously, the purpose for commissioning the Quadrex study would be one key indicator as to the Applicants' motives for withholding the Quadrex Report from the ASLB. See Ex. G. Applicants' Reply to Proposed Findings of Fact and Conclusions of Law Submitted by the Other Parties Phase II dated

November 27, 1985, RIII.1 at 76. The Applicants should no more have failed to supply the ASLB with the evidence presented in CCANP Motions to Reopen II, IV, and the instant motion than they should have failed to provide the ASLB with the Quadrex Report.

All the evidence presented in Motions II, IV, and the instant motion comes from the Applicants and was in their possession prior to the opening of the Phase II hearings. The purpose of the Quadrex study and the relationship of the Quadrex Report to the Phase I licensing hearings were clearly issues in Phase II. Applicants failure to provide the Board with said evidence represents yet another violation of the McGuire rule.

Finally, the argument that CCANP's discovery efforts were inadequate can hardly excuse a conspiracy to obstruct the NRC and deliberately misleading testimony before this Board. This proceeding is not a "catch me if you can" proceeding. The Applicants are required to tell the truth, the whole truth, and nothing but the truth, whether the Intervenor has acquired impeachment evidence through discovery or not. In the face of a conspiracy by Applicants characterized by the hiding of information and by misleading testimony, the inability of the Intervenor to discover and expose the conspiracy and reveal the truth is attributable to the actions of Applicants; such obstruction cannot redound to the benefit of Applicants. Thus, should the Board decide the evidence presented herein is not presented in a timely fashion, then CCANP contends the gravity of the matters raised by the evidence stands as a basis for ignoring the timeliness of presentation and reopening the record.



### Gravity of the Issue Raised

As CCANP argued in Motions II and IV, any timeliness objection to the admission of the new evidence presented pales in the face of the gravity of the matter for which reopening of the record is sought. In this case, the issue is lack of character as revealed by engaging in a conspiracy which included misleading testimony before this Board.

Motions II, IV, and the instant motion are not solely "founded on the presumption that the Quadrex Report was strongly adverse to the 'licensability' of the South Texas Project, giving Applicants a powerful motive to withhold the report from the NRC Staff and Licensing Board." NRC Staff Response to Citizens Concerned About Nuclear Power, Inc. Motion to Reopen the Phase II Record: IV; for Discovery and to Suspend Further Activity in Phase III dated February 6, 1986 at 5.

CCANP certainly contends this presumption is in fact true and the new evidence presented herein supports CCANP in this matter. See Document 1 at 401, L.4 - 24. But it is not necessary for this presumption to be accepted in order to reopen the record. It is enough that Applicants commissioned the Quadrex Corporation to support their planned position before the ASLB that the quality of Brown & Root's design was acceptable and then suppressed the Quadrex Report because it did not support a conclusion of good design.

Regarding the instant motion, however, the primary basis for reopening the record is Applicants' adamant and repeated denial that the Quadrex review was commissioned in order to prepare for the Phase I licensing hearings. If this testimony is found to be

false, then license denial on grounds of lack of character as demonstrated by a management level conspiracy and deliberately misleading testimony is required regardless of any decision as to the seriousness of the Quadrex Report.

Furthermore, if the testimony of all of Applicants' senior management as to the purpose for hiring the Quadrex Corporation was false, the entire case for Applicants unravels. The obvious purpose of such an orchestrated chorus was to create a record devoid of evidence that could lead the ASLB to conclude that the Applicants' violation of the McGuire rule in the handling of the Quadrex Report reflected adversely on their character. If the Report was prepared for the licensing hearings and then withheld, the McGuire violation was deliberate and also resulted from a conspiracy among Applicants' senior management. It would not matter whether post hoc rationalizations by Applicants or Applicants' paid consultants denigrated the importance of the Quadrex Report itself. The ASLB would certainly find the deliberate withholding and conspiracy to reflect adversely on Applicants' character and to form a basis for license denial.

The deliberate withholding pursuant to a common endeavor by management serves as a far better measure of how Applicants viewed the Quadrex findings at the time of their receipt than does their later testimony attempting to mischaracterize, deny, or otherwise disown the findings.

Such a conspiracy is also the antithesis of the behavior the NRC expects in a regulatory system dependent on self policing. Participation in such a conspiracy is clearly disqualifying on character grounds.

The evidence presented in the instant motion to reopen represents a third and independent source of support for CCANP's contention that the Applicants' testified falsely regarding the purpose for commissioning the Quadrex investigation. The Applicants' repeatedly denied that the Quadrex study was commissioned to supply evidence of good design of the South Texas Nuclear Project to Phase I of this proceeding and repeatedly denied that Applicants considered the matters studied by the Quadrex Corporation as relevant to the Phase I issues.

When faced with the evidence in Motion II, Applicants offered an alternative explanation for the Thrash notes (and later for the Saltarelli documents) that being able to answer questions at the Phase I licensing hearings represented a "side benefit" of the study. See Applicants' Proposed Findings of Fact for Reopened Phase II Hearing dated December 13, 1985, FOFs 2, 5, 7, 10, 14, 15, 18 - 22, and 26 - 28; Applicants' Response to "CCANP Motion to Reopen the Phase II Record: IV; For Discovery and To Suspend Further Activity in Phase III" dated February 3, 1986 at 3 - 4.

Yet we now see that the only reason for the Quadrex study recorded in Mr. Thrash's notes of the Management Committee meetings was to prepare for the licensing hearings, that the only reason for the study recorded in Mr. Saltarelli's sworn deposition and memorandum was to prepare for the licensing hearings, and that the only reason for the study recorded in Mr. Briskin's sworn deposition was to prepare for the Phase I licensing hearings. The recording of this purpose and only this purpose by three independent sources is conclusive proof that the

major purpose (and certainly far more than a "side benefit") of the Quadrex investigation was to prepare information for expected questioning in the 1981 Phase I licensing hearings and that Applicants, therefore, considered the matters to be studied by the Quadrex Corporation to be relevant to the Phase I hearings before the study even commenced. These facts stand in direct contradiction to the testimony of Applicants' senior management and the pleadings filed by Applicants' counsel.

False testimony or representations by a licensee or a licensee's agents to the NRC is a matter of grave concern. See generally Citizens Concerned About Nuclear Power, Inc. Proposed Findings of Fact and Conclusions of Law in the Form of a Partial Initial Decision for Reopened Phase II Hearings dated December 12, 1985 at 14 - 16.

The subject matter of the false representation or the seriousness of the misrepresentation is not necessarily the primary inquiry; a misrepresentation of even an immaterial fact can serve as a basis for nonrenewal of a license and, by analogy, for denial of a license. FCC v. WOKO, Inc., 329 U.S. 223, 226 - 227 (1946); Independent Broadcasting v. FCC, 193 F2d 900, 902 (D.C.Cir 1951), cert. denied, 344 U.S. 837 (1952); Crowder v. FCC, 399 F2d 569, 571 (D.C.Cir.), cert. denied, 393 U.S. 962 (1968).

When the central inquiry is an applicants' character, the importance of the act of dishonesty as distinct from the substance of the act is only accentuated. Once the Applicants' character came into question in this proceeding, any act of dishonesty became highly probative evidence of a lack of

character without regard for the materiality of the misrepresentation.

In the instant case, the misrepresentation happens to have been on a matter of crucial importance in the licensing decision to be made by the ASLB. In its Memorandum and Order of February 26, 1985, the Board ruled that the Applicants violated the McGuire rule by failing to provide a copy of the Quadrex Report to the Board upon receipt. LBP-85-6, 21 NRC 447, 461 - 462 (1985). The Board decided to leave open the question of whether that failure reflected adversely on Applicants' character. Id. at 463, Contention 10. The Board thus provided the Applicants an opportunity to explain their failure.

During Applicants' explanation, the purpose for commissioning the Quadrex Report became a contested issue, especially in the reopened Phase II hearings. If Applicants commissioned the Quadrex study in order to prepare for the 1981 Phase I hearings, their failure to provide the report to the ASLB would be highly suspect, particularly given the very critical nature of the Report's findings. The obvious implication would be that the Report was withheld from the Board precisely because it was critical. Such motivation would be inexcusable and fatal to Applicants' license application.

Applicants' testified and filed proposed findings to the effect that the Quadrex study was not prepared for the Phase I hearings, that they perceived no relationship between the Quadrex study and the issues in the Phase I hearings, and that the study was only considered as a possible source of information for the Phase I hearings if the ASLB questioning ranged well beyond the

accepted and recognized issues into other matters. From this perspective, Applicants argued that there was no need for Applicants to turn the Report over to the ASLB.

The purpose for which the Quadrex study was commissioned was and is, therefore, a critical piece of information upon which the ASLB will rely in deciding whether the Applicants' violation of the McGuire rule reflected adversely on their character. Thus, the subject matter of the misrepresentation and the involvement of all members of Applicants' senior management in said misrepresentations only makes the existence of a misrepresentation that much more serious.

Finally, once a false representation is made, the NRC cannot have confidence in any of the other representations by the licensee. A loss of confidence in licensee's representations is without remedy unless there are radical changes in the personnel and corporate values which led to the misrepresentation.

There can be little doubt concerning the gravity of this issue or that the gravity of the issue outweighs any timeliness objections the Board might find to have merit.

2. Addressing a significant issue - As noted above the issues are conspiracy to obstruct the NRC, false and misleading testimony, and lack of character. There could hardly be more significant issues.

3. Potentially altering the Board decision - Whether the new evidence presented in this motion would alter the Board's decision in Phase II would depend on whether the Board believed the witnesses presented by Applicants in Phase II or, instead, accepted CCANP's proposed findings of fact and conclusions of

law.

Reopening the record would, perhaps, not alter the Board's opinion in Phase II if the Board has already concluded that Applicants:

-- hired the Quadrex Corporation to evaluate the quality of Brown & Root's design and engineering work;

-- sought the Quadrex study in order to prepare for the 1981 Phase I operating license hearings;

-- did not provide copies of the Quadrex Report to the Board because the findings did not support a conclusion of good quality in the design;

-- deliberately failed to mention the Quadrex review or Report in their prefiled and cross examination testimony in Phase I;

-- testified in a false and misleading manner in both their prefiled and cross examination testimony in Phase II regarding their view of the seriousness of the Quadrex findings;

-- testified in a false and misleading manner in the reopened Phase II hearings regarding the purpose for commissioning the Quadrex study;

-- have disqualified themselves on character grounds from receiving operating licenses for STNP by their failure to provide the Quadrex Report to the ASLB and by their subsequent omissions and misrepresentations in Phase I and Phase II testimony;

-- reported only a few of the Quadrex findings to the NRC Staff because Applicants feared adverse regulatory action;

-- deliberately obstructed the NRC Staff from performing its lawfully mandated duties by withholding the Quadrex Report;



-- have disqualified themselves on character grounds from receiving operating licenses for STNP by their failure to provide the Quadrex Report to the NRC Staff.

At the same time, the addition of the evidence presented in the instant motion would strengthen the support for such conclusions.

If the Board has not yet reached the conclusions argued by CCANP, then reopening the record is essential in order to complete the record prior to the Board reaching an opinion in Phase II.

#### V. MOTION FOR BOARD ORDERED DISCOVERY

Applicants' failure to bring forward the information supplied by CCANP in Motions II, IV, and the instant motion; the piecemeal fashion in which CCANP has been able to discover said information; and the seriousness of the matters raised by such information call for a comprehensive review of all materials in the possession of Applicants relevant to the issues in this proceeding. CCANP, therefore, moves the Board to require Applicants to produce all documents, including documents previously under the protective order in the Brown & Root suit and prepared for either the litigation between Brown & Root and the STNP partners or for the litigation between the City of Austin and HL&P which are relevant to the following topics:

1. The purpose of commissioning the Quadrex Corporation to perform a study of Brown & Root's design and engineering program in 1981.
2. The seriousness of the findings made by the Quadrex Corporation.

3. The issues to be heard in Phase I of this proceeding.

4. The relationship between the Quadrex Report and the 1981 Phase I hearings.

#### VI. THE ROLE OF APPLICANTS' COUNSEL

As the cover page of Document 1 shows, in the deposition of Mr. Briskin, Mr. Finis E. Cowan was the attorney for Houston Lighting and Power. This is undoubtedly the same Finis E. Cowan whose name appears on the pleadings submitted in this proceeding by Applicants, most recently on the Applicants' Response to "CCANP Motion to Reopen the Phase II Record: IV; For Discovery and to Suspend Further Activity in Phase III" dated February 3, 1986.

In the deposition, Mr. Cowan corrected the attorney who was examining Mr. Briskin to clarify that Mr. Briskin had specifically testified that the Quadrex Report was prepared to provide information to Mr. Goldberg on a matter about which Mr. Goldberg expected to be questioned in the Phase I operating license hearings. Document 1 at 410, L.15 - 411, L.1.

In the Applicants' response to CCANP's Motion IV, Mr. Cowan's name appears on a pleading which includes an affidavit from Mr. Goldberg stating that the Quadrex review was not "performed in order to prepare for the ASLB hearing." Applicants' Response to "CCANP Motion to Reopen the Phase II Record: IV; For Discovery and to Suspend Further Activity in Phase III" dated February 3, 1986, Attachment A at 2.

#### VII. MOTION FOR REOPENED HEARINGS

Following the close of discovery requested herein, CCANP moves the Board to convene evidentiary hearings at which

Applicants will be ordered to produce at least the following witnesses:

- a. Mr. Joseph W. Briskin
- b. Mr. Finis E. Cowan

The testimony of Mr. Briskin is obviously called for, if more than just the document CCANP seeks to admit to the reopened record is necessary to conclude this matter.

The testimony of Mr. Cowan is called for to explain the contradiction between the knowledge he gained in the deposition of Mr. Briskin shortly before the Board's February 26, 1985 Order and the representations subsequently made by the Applicants, including pleadings filed over his name in this proceeding.

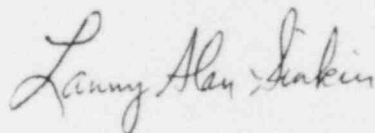
CCANP also reiterates its arguments in Motion IV that Applicants' attorneys are now necessary witnesses on the issue of the relationship of the Quadrex study to the Phase I licensing hearings, that Applicants' senior management have already waived their attorney-client privilege on the matter of their litigation strategy in Phase I through the false testimony of various witnesses on precisely this point, and that there is an independent area of inquiry as to whether Applicants' counsel met their separate and distinct obligations pursuant to the McGuire rule which needs to be examined. See Citizens Concerned About Nuclear Power, Inc. Motion to Reopen the Phase II Record: IV; For Discovery and To Suspend Further Activity in Phase III dated January 17, 1986 at 22 - 23. This argument was never addressed by Applicants. See Applicants' Response to "CCANP Motion to Reopen the Phase II Record: IV; For Discovery and To Suspend Further Activity in Phase III" dated February 3, 1986.

## VI. CONCLUSION

As in its Motion IV, CCANP herein contends that the ASLB would be justified in simply admitting the new documentation and issuing its Phase II decision disqualifying Applicants' senior management from any further involvement in the construction or operation of the South Texas Nuclear Project, without the holding of any additional hearings. The support in the record for such a decision is already ample. Alternatively, CCANP moves the Board to:

1. Reopen the Phase II record to admit Document 1 attached hereto.
2. Order Applicants to produce the documentation as requested herein.
3. Schedule hearings at the conclusion of Board ordered production of documents and order Applicants to produce at said hearings, at a minimum, the witnesses identified herein.

Respectfully submitted,



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Dated: February 21, 1986  
Washington, D.C.

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HOUSTON LIGHTING & POWER	\$	
COMPANY, INDIVIDUALLY AND	\$	
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THE SOUTH TEXAS PROJECT	\$	
PARTICIPATION AGREEMENT	\$	
BETWEEN THE CITY OF SAN	\$	IN THE DISTRICT COURT OF
ANTONIO, TEXAS, CENTRAL	\$	
POWER AND LIGHT COMPANY,	\$	MATAGORDA COUNTY, TEXAS
HOUSTON LIGHTING & POWER	\$	
COMPANY AND THE CITY OF	\$	130TH JUDICIAL DISTRICT
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AMENDED, ET AL.	\$	
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VS.	\$	
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BROWN & ROOT, INC., ET AL.	\$	

ORAL/VIDEO/AUDIO DEPOSITION

Joseph W. Briskin

Volume II

January 30, 1985, Morning and Afternoon Sessions

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Corpus Christi, Texas 78471  
By Leslie Craven, Esquire

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Counsel for Plaintiff  
Central Power and Light Company

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SHAW, PITTMAN, POTTS & TROWBRIDGE  
Attorneys at Law  
1800 M Street, N.W.  
Suite 900S  
Washington, D.C. 20036  
By Robert E. Zahler, Esquire  

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Counsel for Defendant  
Brown & Root, Inc.

ALSO PRESENT:

Chris Lindauer, Video Operator

1 HL&P make a determination as to whether Brown & Root  
2 Engineering would be able to support Construction on the  
3 South Texas Project?

4 MR. COWAN: At what point in time are you  
5 talking about now, Counsel?

6 MR. ZAHLER: The end of August 1980.

7 A I don't recall what was--what HL&P decided or  
8 what any individual decided. Now, Mr. Granger had  
9 already made a decision, obviously.

10 Q (By Mr. Zahler) Based on his statement--

11 A Based on his statement, he'd, obviously, made  
12 a decision that he thought it would.

13 Q Do you know of any contrary view at this point  
14 in time within the HL&P organization?

15 A Specifically, no.

16 Q Generally?

17 A I don't recall any.

18 Q Were you involved, at all, in the  
19 determinations made in the late spring and the summer of  
20 1981 as to whether Brown & Root Engineering had the  
21 ability to support Construction on the South Texas  
22 Project?

23 A I don't recall any specific meetings that I  
24 might have sat in to discuss that, other than--would you  
25 repeat that?



1 Q Yes.

2 A I'm not sure I heard it right.

3 Q Were you involved in any meetings or  
4 discussions in the late spring of 1981--in the summer of  
5 1981, about whether Brown & Root Engineering could  
6 support Construction on the South Texas Project?

7 A That's a pretty broad question, and I would  
8 imagine that I did sit in discussions about Brown & Root  
9 Engineering's ability to support Construction. But I  
10 don't remember sitting in on any meetings, specifically  
11 for that purpose.

12 Q At some point in time, HL&P made the  
13 determination to terminate Brown & Root on the South  
14 Texas Project as architect/engineer and construction  
15 manager. Is that correct?

16 A Yes.

17 Q Were you involved in any of the analysis or  
18 decisions leading to that conclusion?

19 A No, I was involved in some discussion about  
20 it, but I was never involved in the decision-making  
21 process or any analysis, that I can remember.

22 Q What were the discussions that you were  
23 involved in about that?

24 A I remember sitting at dinner and discussing  
25 the fact that Mr. Goldberg was concerned about Brown &

1 Root Engineering's ability to complete the project and  
2 support Construction, and discussing the possibility of  
3 having to replace Brown & Root as the  
4 engineer--architect/engineer.

5 And I can remember my feelings about it, some  
6 of the things I mentioned about it and some of the  
7 things Mr. Goldberg said that convinced me that it  
8 probably ought to happen.

9 Q Who was present at these dinner meeting  
10 discussions that you just referred to?

11 A Well, I'm not sure that there was more than  
12 one. I remember one. I'm not sure if there were one or  
13 two. Mr. Barker, Mr. Goldberg, Mr. Oprea, Mr. Williams.

14 Q And yourself?

15 A And myself, of course.

16 Q When did that dinner meeting discussion take  
17 place?

18 A It was sometime in '81, in the summer of '81,  
19 possibly. I don't recall, exactly. It would have been  
20 when we were down at the site for a project meeting of  
21 some type, and we usually tried to get together for  
22 dinner when we could just to chat about where we are and  
23 what's happening.

24 Q Do you recall where this dinner meeting took  
25 place?

1 A Yes. In a restaurant called Wilbur's.

2 Q I know it well.

3 What did Mr. Goldberg tell you about his views  
4 with respect to Brown & Root's ability to complete the  
5 project and support Construction, at this dinner  
6 meeting?

7 A Well, I don't remember his specific issues as  
8 supporting Construction. I remember he was very  
9 concerned about the quality of the engineering and  
10 indicated that, in his view, that the project would not  
11 be licensed, if we continue with Brown & Root  
12 Engineering.

13 Q It was his view that, if you continued with  
14 Brown & Root Engineering that the pro--

15 A We wouldn't get a license.

16 Q Did he tell you what the basis for that view  
17 was?

18 A I believe, if I'm not mistaken, that he  
19 indicated that it was Cloin Robinson's viewpoint.

20 Q Did Mr. Goldberg--

21 MR. COWAN: Excuse me a minute. Just for the  
22 sake of accuracy, I think that's Robertson, rather than  
23 Robinson.

24 THE WITNESS: Thank you.

25 Q (By Mr. Zahler) Did he tell you the basis of

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Mr. Robertson's view in that regard?

A He may or may not have discussed some of the technicalities, but I don't recall it.

Q What was your initial view, at this meeting, with respect to either Brown & Root's ability to complete the project or to support Construction?

A As I said, I don't remember the specific discussion as to whether or not they could support it. My concern was that I felt that there would be a delay to the project if we did this. And I had never seen an architect/engineer replaced before, although, I had seen constructors replaced before. And I was very concerned about what the impact to the project would be.

Q Did you have an opinion, at this point in time, before hearing Mr. Goldberg's views as to whether Brown & Root would be able to complete the engineering portion of the project?

A Whether they would be able to complete it?

Q Yes.

A I had no idea in my mind whether they could complete it or not. I hadn't thought about it. I thought they could complete it, some day. I felt that--and here, again, timing is out of phase for me. I don't know where we were in time, but I was very concerned about the way the man-hours were growing and

1 the number of people that we had on the project. I  
2 don't remember thinking of things in terms of whether or  
3 not they could support Construction in those terms.

4 Q When Mr. Goldberg told you that he was  
5 concerned about the quality of the engineering and had  
6 received advice from Mr. Robertson that the project  
7 would never be licensed if Brown & Root continued, did  
8 he have knowledge, at that time, of existing  
9 deficiencies in Brown & Root engineering, that is, the  
10 quality of the engineering?

11 A I believe he did, yes, from the Quadrex  
12 report.

13 Q Other than the Quadrex report, were you aware  
14 of any information that Mr. Goldberg had that he might  
15 have told you about?

16 A No, I'm not aware of any.

17 Q Was it your understanding that the basis for  
18 Mr. Goldberg's view or concerns about the quality of the  
19 engineering and the fact that the project might not be  
20 licensed if Brown & Root engineering continued was from  
21 the Quadrex report?

22 A Certainly, in part, from the Quadrex report.  
23 I wouldn't know where else--what else he was using as  
24 his base. WE didn't discuss it in any detail.

25 Q Have you, subsequently, seen

1 Mr. Goldberg's--either heard or seen Mr. Goldberg's  
2 testimony about the validity of the Quadrex report and  
3 the findings of the Quadrex report?

4 A No.

5 Q Did you give a sworn statement to anyone from  
6 the Nuclear Regulatory Commission about the Quadrex  
7 report, or the release of the Quadrex report, or the  
8 timing of informing the NRC about the Quadrex report?

9 A Not that I can recall.

10 Q Do you recall giving any type of statement to  
11 an investigator about that matter?

12 A No.

13 Q Were you aware that sworn statements were  
14 taken from HL&P personnel about that?

15 A No.

16 Q Did you participate in any decisions or  
17 discussions within HL&P as to whether the Quadrex report  
18 should be disclosed to the Nuclear Regulatory  
19 Commission?

20 A No.

21 Q Do you know whether that issue was even  
22 considered at the time that the Quadrex report was  
23 submitted to HL&P?

24 A Not really, no. I always supposed it would  
25 be--excuse me, my throat. I always supposed it would be



1 submitted, since Mr. Goldberg had sought to have that  
2 report made to back up his testimony before the ASLB  
3 that was expected in '81. And I'd just pre-suppose that  
4 it would be submitted as backup.

5 Q Why don't we talk about the Quadrex report,  
6 for a second. What was your understanding as to why the  
7 Quadrex report was commissioned?

8 A In October when--either in October or shortly  
9 after Mr. Goldberg came on board, and we discussed the  
10 Show Cause and the ASLB Hearings that were planned for  
11 April of '81, Mr. Goldberg felt, at that time, that he  
12 was going to be on the stand before the ASLB and, at  
13 some point in time, he would, more than likely, be asked  
14 to testify as to his opinion of the quality of the  
15 design. And he felt that, in order to do that, he  
16 needed to bring in an outside consulting group who had  
17 the type of skills that could determine the quality of  
18 the design, and chose Quadrex. I don't know that he,  
19 personally, chose Quadrex, but Quadrex was chosen to  
20 investigate the design and to give him a report.

21 Q Do you know whether other consultant firms,  
22 besides Quadrex, were considered for this work?

23 A I believe there were. I don't know if it was  
24 a competitive bid or what, but I believe there were  
25 other firms considered.



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20 investigate the design and to give him a report.

21 Q Do you know whether other consultant firms,  
22 besides Quadrex, were considered for this work?

23 A I believe there were. I don't know if it was  
24 a competitive bid or what, but I believe there were  
25 other firms considered.

1 Q Do you know the basis on which Quadrex was  
2 chosen?

3 A No, I do not. That was not handled on the  
4 project. It was handled by Mr. Sumpter, who was part of  
5 Mr. Goldberg's staff.

6 Q Do you know whether Dr. Sumpter was the person  
7 who chose Quadrex?

8 A I do not know what the selection process was,  
9 or who participated.

10 Q Did you have an understanding as to the  
11 methodology or approach that Quadrex was to use in  
12 reviewing the engineering on the South Texas Project?

13 A Well, just generally, that they were going to  
14 review the documents, review the specifications and the  
15 drawings, et cetera, and that they were going to hold  
16 interviews and discussions with the design people within  
17 the Brown & Root organization.

18 Q Do you know whether Quadrex reviewed the  
19 entire South Texas Project design and engineering or--

20 A I don't know.

21 Q ...just portions of it?

22 A I do not know, either way.

23 Q Do you know whether they actually reviewed the  
24 design documents, specifications and drawings?

25 A I do not know, specifically, anything they

1 reviewed.

2 Q Were you aware that Quadrex prepared written  
3 questions that were submitted to Brown & Root personnel  
4 to answer?

5 A Yes. Now that you bring it up, yes, I do  
6 remember that they had a questionnaire. And I don't  
7 recall if it was a generic questionnaire or if it was  
8 one prepared for each of the disciplines. But, yes,  
9 there was a questionnaire. It seemed to be the  
10 kick-off, prior to the meeting.

11 Q Do you know how that questionnaire was  
12 prepared?

13 A No, I do not.

14 Q Were you involved in the preparation of it?

15 A No, I was not.

16 Q Did you review any of the questions?

17 A I think, I remember looking at a  
18 questionnaire. I don't know that I was reviewing it. I  
19 just remember looking at one. At one point in time, I  
20 took my own little test of where they were and how they  
21 were operating, just by going into a meeting and sitting  
22 down and listening for a while and looking at--I  
23 remember looking at a questionnaire.

24 Q What meeting was this that you attended?

25 A One of the discipline meetings that was being

1 held with Brown & Root. I think it was in the Nuclear  
2 Department, Nuclear Engineering Group. I'm not sure. I  
3 don't remember any of the names of the people that were  
4 there. Just, it was a meeting in the building, and I  
5 stepped in and sat down and listened for a while, and  
6 then, I left.

7 Q Do you know whether Dr. Sumpter suggested  
8 questions to the Quadrex people?

9 A I do not know.

10 Q Do you know whether Dr. Sumpter or people on  
11 his staff reviewed and edited the questionnaire prepared  
12 by Quadrex?

13 A I do not.

14 Q Do you know whether Quadrex identified any  
15 deficiencies that were not previously known to Brown &  
16 Root?

17 A No, I do not know.

18 Q Do you know whether the Quadrex personnel did  
19 any independent engineering or design review  
20 verification of the South Texas Project design?

21 A I don't--I'm not sure I understand the  
22 question.

23 Q Do you know whether any of the Quadrex  
24 personnel reviewed the design, themselves, and  
25 determined whether it was adequate or inadequate, rather

1 than relying on interviews or comments that Brown & Root  
2 personnel had about the design?

3 A I don't know whether they did or not. I would  
4 have hoped they would have, and I would suspect that  
5 they did. I thought that was part of the process, that  
6 they would review the design as well as--and question  
7 various factors of it with Brown & Root.

8 Q Do you know how long Quadrex took to perform  
9 the investigative phase of its analysis?

10 A No, I don't recall. It was a number of  
11 months, certainly, but I don't recall.

12 Q Your recollection is it went over a number of  
13 months?

14 A The total process, yeah. Are you talking  
15 about just a portion of it?

16 Q Well, just, if you will, the fact-gathering  
17 portion, that is when the Quadrex people went into Brown  
18 & Root's offices and interviewed them, or reviewed, or  
19 whatever?

20 A No, I don't know. I have no idea what that  
21 was. It was--my impression is it was more than a month,  
22 but I don't--I couldn't recall what that was. And the  
23 reason I say that is I would suspect that some of these  
24 meetings were taking as long as three or four days, and  
25 it would have taken a while to go through those, so in



1 my mind it has that kind of a context.

2 Q Do you know how many people Quadrex assigned  
3 to this report?

4 A No, I don't.

5 Q Do you have any experience in the industry  
6 about independent design reviews that have been  
7 performed at various nuclear projects?

8 A No, I do not.

9 Q I mean, for example, were you aware of the  
10 design reviews, just in general terms, the existence of  
11 them, that were done at the Diablo Canyon Plant?

12 A I know there was a design review done, at  
13 least, in part, based on the allegations that were  
14 brought by intervenors and others. I know that there  
15 are independent design reviews now being done or  
16 requested by the NRC, but I do not know the specifics of  
17 any design review. I've not gotten involved in any of  
18 that.

19 Q Do you know how long any of these have taken?

20 A I do not.

21 Q Ballpark, roughly?

22 A No, I do not.

23 MR. ZAHLER: Let's take a break at this point.

24 (Deposition recessed at 2:59 p.m., January 30,

25 1985. Deposition reconvened at 3:10 p.m.,

1                   January 30, 1985, at which time the following  
2                   transpired:

3                   DIRECT EXAMINATION CONTINUED

4                   By Mr. Zahler:

5                   Q     Mr. Briskin, do you know, in fact, whether any  
6                   of the issues identified in the Quadrex report turned  
7                   out to raise matters that Brown & Root was unable to  
8                   resolve during its tenure on the South Texas Project?

9                   A     You mean unable meaning that there were--well,  
10                  can you clarify that, unable?

11                  Q     Did Quadrex identify any technical issues  
12                  related to the South Texas Project design that Brown &  
13                  Root was not able to respond to in an adequate manner?

14                  A     I don't know.

15                  Q     Were you involved at all in the turnover  
16                  procedure, in the development of the turnover packages  
17                  when Brown & Root left and Bechtel came in?

18                  A     Not specifically in the development of the  
19                  packages, just the fact that the packages were being  
20                  developed, and that part of my organization was involved  
21                  in accepting the packages, and there was a Records  
22                  Management Group was involved in the process of turning  
23                  it over.

24                  Q     Did you or people working under you have  
25                  occasion to review the technical adequacy of the



1 turnover packages that Brown & Root provided to Bechtel?

2 A No, that would have been Mr. Dew's area of  
3 Engineering. At that time, I was no longer responsible  
4 for Engineering.

5 Q Were you involved in discussions or meetings  
6 with people at HL&P when the Quadrex report was first  
7 received?

8 A I'm sure I was involved to some degree in  
9 talking about that. I remember that there were some  
10 meetings that went on to discuss it, to discuss the  
11 details with Brown & Root. And then Brown & Root was  
12 preparing answers to those questions. I remember  
13 stepping into that meeting a number of times. I was not  
14 a participant in the meetings, per se.

15 Q Did Mr. Goldberg tell you whether the Quadrex  
16 report accomplished what he desired, which was to have  
17 an independent review of the engineering design that he  
18 could present to the ASLB?

19 MR. COWAN: Now, wait a minute. I think that  
20 misstates the witness' previous testimony. I object to  
21 it on those grounds.

22 What the witness testified was that  
23 Mr. Goldberg thought he would be questioned about the  
24 issue and wanted information. I really think your  
25 question seriously misstates the witness' testimony, and

1 that's the reason why I object.

2 MR. ZAHLER: I'm sorry, Mr. Cowan. Could you  
3 please re-read my question?

4 (The last-above question was read back by the  
5 reporter.)

6 A I understand your point.

7 Q (By Mr. Zahler) Let me ask you, Mr. Briskin,  
8 was it Mr. Goldberg's desire that he would have an  
9 independent review of the design that he could present  
10 to the ASLB?

11 A No.

12 Q What was his view--

13 A I think his view--

14 Q ...his desire?

15 A His view was that he would have an independent  
16 review of design made so that he could state an opinion  
17 on the quality of the design should he be asked by the  
18 ASLB.

19 Q Did Mr. Goldberg tell you whether the Quadrex  
20 report that was delivered to HL&P satisfied that desire?

21 A I don't remember him saying things in that  
22 context, per se. I think I have the impression that  
23 Mr. Goldberg felt that he had an answer to his question,  
24 as to the quality of the report, but I--

25 Q Did Mr. Goldberg--

1 A Excuse me.

2 Q I'm sorry.

3 A ...but I don't remember him ever saying that  
4 to me.

5 Q Did Mr. Goldberg express surprise to you about  
6 the results of the Quadrex report?

7 A Surprise?

8 Q Yes.

9 A No. I had very little discussion, that I can  
10 recall, with Mr. Goldberg on the whole subject of the  
11 Quadrex report. That was really a subject that he  
12 worked with Mr. Sumpter and Mr. Dew on a detailed basis.  
13 I was not involved in those discussions, that I can  
14 recall.

15 Q Do you know what the qualifications or  
16 experience level of the personnel that Quadrex assigned  
17 to this effort were?

18 A No, I do not. I was not involved in it.

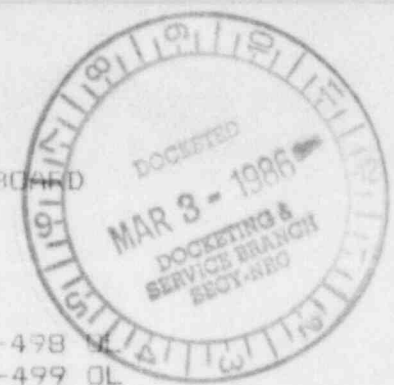
19 Q Let me ask you to return to Briskin  
20 Exhibit 22-A. If you turn to the third page from the  
21 back, which is numbered Page 4, at the bottom, there's a  
22 section at the beginning that starts "Conclusion." Do  
23 you see that?

24 A Yes.

25 Q Turning over to the next page and looking at

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

(  
)  
( Docket Nos. 50-498  
) 50-499 DL  
(  
)

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I hereby certify that copies of CITIZENS CONCERNED ABOUT NUCLEAR POWER, INC. (CCANP) MOTION TO REOPEN THE PHASE II RECORD: V AND FOR BOARD ORDERED PRODUCTION OF DOCUMENTS BY APPLICANTS were served by messenger (\*) or by deposit in the U.S. Mail, first class postage paid to the following individuals and entities on the 28th day of February 1986.

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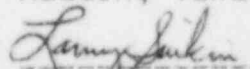
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