



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
HOUSTON LIGHTING & POWER)	Docket No. 50-466
COMPANY)	
)	
(Allens Creek Nuclear)	
Generating Station, Unit 1))	

APPLICANT'S RESPONSE TO
JOHN F. DOHERTY'S MOTION
TO POSTPONE DISCOVERY UNTIL AFTER
THE NEXT SPECIAL PREHEARING CONFERENCE

Applicant files this response to "John F. Doherty's Motion to Postpone Discovery Until After the Next Special Prehearing Conference," dated August 6, 1979. ^{*/}

^{*/} The relief Mr. Doherty seeks might be more properly requested by a motion for a protective order pursuant to 10 CFR §2.740(c):

(c) Protective Order. Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. . . .

The parallel federal court provision, FRCP 26(c), has been interpreted to permit the court to regulate the time of discovery. See generally 4 Moore's Federal Practice ¶26.70[2] (2d ed. 1979). Applicant respectfully submits that Mr. Doherty has not demonstrated "good cause shown" pursuant to 10 CFR §2.740(c).

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Mr. Doherty's complaint is that the Applicant has served interrogatories on him at a time when he is otherwise occupied with preparations for the next Special Prehearing Conference in this proceeding. Mr. Doherty states that Applicant did this in a calculated effort "to interfere with his time available to amend contentions . . . and are only secondarily involved with information gathering." This statement is not supported by the facts.

First, Applicant forebore the service of interrogatories on Mr. Doherty until the time to amend contentions pursuant to this Board's Memorandum and Order of April 11, 1979, had expired. It was Applicant's view that to file interrogatories before the expiration of the period allowed by the April 11 Order would have been both burdensome and confusing. The process of discovery against Mr. Doherty was further complicated by the fact that for several months he wore "two hats" -- as an intervenor in his own right and as an official of intervenor TexPirg. In the latter role his deposition was taken and he responded to interrogatories served by Applicant. (To have proceeded with separate discovery on Mr. Doherty as an individual during this period of time would, undoubtedly, have been cause for comparable protest)

On the single issue as to which Mr. Doherty was initially admitted as an intervenor (ATWS), his deposition was taken promptly

(March 26, 1979) and related interrogatories were served on May 18 on intervenor TexPirg, with whom he was consolidated for purposes of this issue.

In summary, Applicant proceeded first with discovery against the intervenor (TexPirg) with the most extensive set of initially accepted contentions. Applicant chose not to burden Mr. Doherty during his tenure as a TexPirg official and pending expiration of the time allotted for amendment of his contentions. In any event, Applicant proceeded with discovery in an orderly fashion and in a manner which we earnestly believe accommodated Mr. Doherty's many and varied roles over the past several months. Mr. Doherty's assertion that Applicant delayed discovery against him for more than three months is simply wrong.

Mr. Doherty characterizes Applicant's interrogatories as "merely questions about the wording of contentions. . . ." A function of discovery is to ascertain with more precision the meaning of contentions. As Mr. Doherty states, "At the heart of any construction license proceeding is the contentions of the parties." Determining the scope of contentions is essential to preparing motions for summary disposition and testimony, and is a necessary and legitimate end of the pre-hearing procedures of which Mr. Doherty complains.

In summary, the essential elements of the motion are wrong as a matter of fact and law. The record, we believe, shows that discovery has proceeded fairly and in good faith, and consistent with the requirements of 10 CFR §2.740(d).

For the foregoing reasons, the motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Response to John F. Doherty's Motion to Postpone Discovery Until After The Next Special Prehearing Conference, in the above captioned proceeding, were served on the following by deposit in the United States mail, postage prepaid, or by hand delivery this 16th day of August, 1979:

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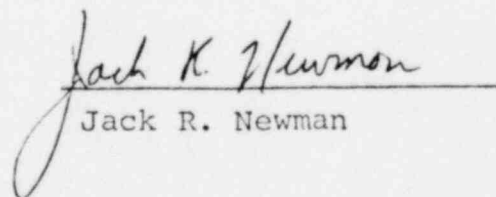
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