



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANT'S RESPONSE TO
PETITION FOR LEAVE TO INTERVENE
FILED BY BRYAN L. BAKER

Applicant files this response to the petition for leave to intervene filed by Bryan L. Baker.

Mr. Baker states that he resides in Houston which is on the fringe of the 50 mile area the Board found "will not preclude a finding of standing" Order Ruling on Intervention Petitions, at 26 (February 9, 1979) hereinafter "Order"). Although he alleges the proposed ACNGS will be "a direct threat to my own health, safety, and personal well-being, that of my loved ones, and that of the entire locale," he fails to specify, as required by § 2.714(a), in what respects the proposed ACNGS will pose such "a direct threat." Such specification is particularly important where the petitioner resides on the outer boundary of the 50 mile radius from the proposed site.

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Petitioner does mention five areas of concerns in his petition, but all either lack the specificity required by § 2.714 or are concerns which are not proper issues for consideration in this proceeding. In paragraph (1) (p. 2), petitioner refers to both routine and accidental releases of radioactivity which he believes will not be "safe". The standards for low level releases of radioactivity are set forth in Appendix I to 10 CFR Part 50 and cannot be challenged in this proceeding absent a showing of special circumstances. 10 CFR § 2.758. Petitioner has not made such a showing nor has he sought to challenge Applicant's compliance with the provisions of Appendix I. With respect to accidental releases, petitioner has not specified what kinds of accidents he is concerned about or how these accidents will occur. Nor has he alleged that anticipated doses in the event of an accident will exceed the limits of 10 CFR 100. If petitioner is concerned with releases hypothetically resulting from something more than a design basis accident (i.e., "unforeseeable accidents"), such issues are not proper for consideration in this proceeding absent a showing of special circumstances. Order at 58.

In paragraph (2), petitioner states that he is concerned about the adequacy of the ACNRS "safety systems" but does not identify to which safety systems he is referring. This concern is, obviously, impermissibly vague.

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In paragraph (3), petitioner expresses concerns over the storage and transportation of nuclear wastes. The environmental effects of nuclear waste disposal are set forth in 10 CFR § 51.20(e), Table S-3 and the environmental effects of transportation of nuclear wastes are covered in 10 CFR § 51.20(g), Table S-4. Petitioner has made no showing why environmental effects other than those set forth in the NRC regulations should be considered in this proceeding. Without such a showing, these concerns are not proper for consideration in this proceeding. Moreover, petitioner's reference to the transportation of wastes "especially through Houston" is based on nothing but pure speculation and, as such, is not a basis to support standing. Exxon Nuclear Co. Inc. (Nuclear Fuel Recovery and Recycling Center), LBP-77-59, 6 NRC 518, 519-20 (1977); Order at 48.

In paragraph (4), petitioner raises concerns about the financial aspects of construction and operation of ACNGS and states that the "ratepayer will be saddled with tremendous costs and little benefits." Since petitioner claims that he is an "HL&P ratepayer" (p. 1), presumably petitioner is concerned about the financial impacts of construction of ACNGS on his future electric rates. The Commission has held that a petitioner cannot intervene in a licensing proceeding on the

basis of standing as a ratepayer. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). The reasons for this is that purely economic interests are not within the "zone of interests" protected by the Atomic Energy Act or NEPA. Tennessee Valley Authority, (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420 (1977); Order at 18.

In paragraph (5), petitioner states that "alternative and safer" energy sources will be available "long before the proposed facility is paid for." It appears that the concern expressed in this paragraph relates to petitioner's status as a ratepayer (see paragraph 4) and thus would not be a proper concern for this proceeding based on the reasons set forth above.

Having failed to identify a litigable concern with degree of specificity required by § 2.714, petitioner's request for leave to intervene should be denied.

In response to the Board's requirement in the Supplementary Notice, petitioner states that "I did not seek to intervene in 1978 because of the restrictions on contentions which could be made at that time." As we have pointed out in our response dated July 30, 1979, to fifteen other petitioners and in our motion dated July 30, 1979, to schedule the date

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for the special prehearing conference, we are not in a position at this time to know whether this statement made by petitioner is accurate. Thus, at a minimum, this petition can not be granted until petitioner's statement is tested by an inquiry at the special prehearing conference in order to ascertain whether petitioner was actually aware of the Board's earlier notices and as a consequence, did not file a petition for leave to intervene. Only after such inquiry will the Board be in a position to rule on whether petitioner has met the Board's requirements for intervention.

Respectfully submitted,

C. Thomas Biddle Jr.

OF COUNSEL:

BAKER & BOTTS
3000 One Shell Plaza
Houston, Texas 77002

J. Gregory Copeland
C. Thomas Biddle, Jr.
Charles G. Thrash, Jr.
3000 One Shell Plaza
Houston, Texas 77002

LOWENSTEIN, NEWMAN, REIS,
AXELRAD & TOLL
1025 Connecticut Ave., N.W.
Washington, D.C. 20036

Jack R. Newman
Robert H. Culp
1025 Connecticut Ave., N.W.
Washington, D.C. 20036

ATTORNEYS FOR APPLICANT
HOUSTON LIGHTING & POWER COMPANY

CTB:02:G

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	§	
	§	
HOUSTON LIGHTING & POWER COMPANY	§	Docket No. 50466
	§	
(Allens Creek Nuclear Generating	§	
Station, Unit 1)	§	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicant's Response to the Petition For Leave to Intervene Filed by Bryan L. Baker in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, or by hand delivery this 2 day of August, 1979.

Sheldon J. Wolfe, Esq., Chairman
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. E. Leonard Cheatum
Route 3, Box 350A
Watkinsville, Georgia 30677

Mr. Gustave A. Linenberger
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Chase R. Stephens
Docketing and Service Section
Office of the Secretary of the
Commission
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

R. Gordon Gooch, Esq.
Baker & Botts
1701 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Richard Lowerre, Esq.
Assistant Attorney General
for the State of Texas
P. O. Box 12548
Capitol Station
Austin, Texas 78711

Hon. Charles J. Dusek
Mayor, City of Wallis
P. O. Box 312
Wallis, Texas 77485

Hon. Leroy H. Grebe
County Judge, Austin County
P. O. Box 99
Bellville, Texas 77418

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D. C. 20555

Steve Sohinki, Esq.
Staff Counsel
U. S. Nuclear Regulatory
Commission
Washington, D. C. 20555

John F. Doherty
4438 1/2 Leeland
Houston, Texas 77023

Madeline Bass Framson
4822 Waynesboro Drive
Houston, Texas 77035

Robert S. Framson
4822 Waynesboro Drive
Houston, Texas 77035

Carro Hinderstein
8739 Link Terrace
Houston, Texas 77025

D. Marrack
420 Mulberry Lane
Bellaire, Texas 77401

Brenda McCorkle
6140 Darnell
Houston, Texas 77074

F. H. Potthoff, III
1814 Pine Village
Houston, Texas 77080

Wayne E. Rentfro
P. O. Box 1335
Rosenberg, Texas 77471

James M. Scott, Jr.
8302 Albacore
Houston, Texas 77074

Charles Perez
1014 Montrose Blvd.
Houston, Texas 77019

Nancy L. Durham
Box 328
Simonton, Texas 77476

Mrs. Karen L. Stade
P. O. Box 395
Guy, Texas 77444

Gayle De Gregori
2327 Goldsmith
Houston, Texas 77030

Jon D. Pittman, Sr.
2311 Bamore
Rosenberg, Texas 77471

Mrs. W. S. Cleaves
8141 Joplin Street
Houston, Texas 77017

Ms. Ann Wharton
1424 Kipling
Houston, Texas 77006

Vesta Eidman
1117 River Bend Drive
Houston, Texas 77063

Ms. Kathy Mohnke
1411 Lamonte
Houston, Texas 77018

Mr. James H. Robinson
1228 Bomar
Houston, Texas 77024

Dick Day
3603 Drummond
Houston, Texas 77025

Ms. Bonny Wallace
614 Meadowlawn
LaPorte, Texas 77571

Niami Hanson
6441 1/2 Mercer
Houston, Texas 77005

Elinore P. Cumings
926 Horace Mann
Rosenberg, Texas 77471

1091 209

Mr. & Mrs. Bruce A. Palmiter
P. O. Box 183
302 South Missouri Street
Orchard, Texas 77464

Fern Barnes
2406 Morning Glory
Pasadena, Texas 77503

Jeanne Robertson
23 Nueces Street
Bay City, Texas 77417

Eugene E. Mueller
15602 Corsair Rd.
Houston, Texas 77053

J. Michael Ancarrow
4130 Bell
Houston, Texas 77023

John Beverage
Jeanette Beverage
13031 Harwin
Houston, Texas 77072

Barabara Blatt
4314 1/2 Bell
Houston, Texas 77023

Laura Brode
5422 Olana Dr.
Houston, Texas 77032

James D. Chilcoat
4310 Bell
Houston, Texas 77023

Gabriella Cosgriff
5203 Crystall Bay
Houston, Texas 77043

Abraham Davidson
704 Hyde Park
Houston, Texas 77006

J. Cl. De Bremaecker
2128 Addison
Houston, Texas 77030

Robert C. Kuehm
Rachael Kuehm
1155 Curtin
Houston, Texas 77018

William Schuessler
5810 Darnell
Houston, Texas 77074

Dana Erichson
Pat Erichson
327 Hedwig
Houston, Texas 77024

Stephen A. Doggett, Esq.
P. O. Box 592
Rosenberg, Texas 77471

Bryan L. Baker
1118 Montrose
Houston, Texas 77019

J. Morgan Bishop
Margaret Bishop
11418 Oak Spring
Houston, Texas 77043

Janice Blue
1708 Rosewood
Houston, Texas 77004

Stephanie M. Brown
3510 E. Broadway #612
Pearland, Texas 77518

Carolina Conn
1414 Scenic Ridge
Houston, Texas 77043

Fortes Johnston
1407 Scenic Ridge
Houston, Texas 77043

Gregory J. Kainer
11118 Wickwood
Houston, Texas 77024

Barbara Karkabi
1917 Wentworth
Houston, Texas 77004

T. E. Elder
2205 Hazard
Houston, Texas 77019

Helen Foley
3923 Law #16
Houston, Texas 77005

Mary L. Fuller
614 Bienville
Houston, Texas 77015

Barbara J. Ginn
4309 Bell
Houston, Texas 77023

Robin Griffith
1034 Sally Ann
Rosenberg, Texas 77471

Marjorie A. Gurasich
Rt. 1, Box 410
Wallis, Texas 77405

W. Matthew Perrenod
4070 Merrick
Houston, Texas 77025

Dorothy J. Ryan
4309 Bell
Houston, Texas 77023

Glen Van Slyke
1739 Marshall
Houston, Texas 77098

Marlene R. Warner
6026 Beaudry
Houston, Texas 77035

Jeffery R. West
10903 Sageberry
Houston, Texas 77039

Darby T. Sidie
1509 South Post Oak Ln. Apt 4A
Houston, Texas 77056

Rosemary N. Lemmer
11423 Oak Spring
Houston, Texas 77043

Laura Lewis
1203 Bartlett #4
Houston, Texas 77006

Susan S. McGuire
8837 Larston
Houston, Texas 77055

Frances Pavlovic
111 Datonia
Bellaire, Texas 77401

Virginia Perrenod
2704 Beatty #112
Houston, Texas 77023

Connie Wilson
11427 Oak Spring
Houston, Texas 77043

James R. Piepmeier
618 West Drew
Houston, Texas 77006

Patricia L. Strelein
Route 2, Box 395-C
Richmond, Texas

D. B. Waller
1708 Kipling
Houston, Texas 77098

Ron Waters
3620 Washington Ave., No. 362
Houston, Texas 77007

Dorothy F. Carrick
Box 409 Wagon Rd. Rfd. #1
Wallis, Texas 77045

1091 211

C. Thomas Biddle Jr.
C. Thomas Biddle, Jr.