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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

(Allens Creek Nuclear
Generating Station,
Unit 1)

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Docket No. 50-466

APPLICANT'S RESPONSE TO TEXPIRG'S
ADDITIONAL CONTENTIONS OF MAY 16

In its Memorandum and Order of April 11, 1979, the Board allowed all parties thirty days from the date of the Order within which to assert additional contentions meeting a specified criterion. This time period expired on May 11, 1979. On May 18, 1979, Applicant received a list of additional contentions from TexPirg dated May 12, 1979, but bearing a certificate of service date of May 16, 1979. TexPirg, represented by counsel, plainly failed to meet the timeliness requirement of the Board's Order and sets forth no grounds whatsoever to justify its late filing. Accordingly, these contentions should be dismissed. However, if the Board rules otherwise, Applicant submits the following individual responses to TexPirg's additional contentions.

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Contention 1. Inadequacy of the FES based upon number of units, alternatives and delegation.

Applicant opposes admission of this contention on the following grounds:

A. The contention with respect to the scope of the project is based upon allegations of fact which are without any basis. Applicant has not committed, nor does it have any plans to construct and operate additional units at the ACNGS site. Applicant has a pending application before the NRC to construct and operate only one unit at ACNGS. The ASLB previously approved the withdrawal of HL&P's application for construction and operation of Unit 2 (Board's Order of August 14, 1978).

Moreover, the Board has previously rejected an almost identical contention noting that "in the event another unit (or units) were to be proposed, environmental analyses would have to be performed by the Applicant and Staff." Order Ruling Upon Intervention Petitions, p. 5 (February 9, 1979).

B. The allegations with respect to the insufficient description of alternatives lacks both specificity and basis as required by 10 CFR §2.714(b). TexPirg alleges that the Staff's analysis of alternative sites is deficient in two respects. First, it states that the effects on people living in Houston of a "core melt and steam explosion" at alternative sites must be considered. This raises the issue of consideration of

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accidents greater than design basis accidents which must be rejected for the reasons discussed in Applicant's response to Contention 12. Second, TexPirg states that alternative means of transportation of the reactor pressure vessel to alternative sites should be considered. This is simply a restatement of a contention which is already in the case. Finally, contrary to TexPirg's claim, 10 CFR §51.52(b)(3) provides that the findings in the FES may be modified by the ASLB's initial decision.

C. The allegations with respect to environmental problems being deferred for further study identify only three items that have been improperly deferred. The three items cited by TexPirg, namely, chlorine, heavy metals, and survival of game fish, all have been admitted as issues in this proceeding. See Order Ruling Upon Intervention Petitions, p. 4 (February 9, 1979). At this point TexPirg's["] allegations are unproven and provide no basis for a conclusion that the FES is in any way defective. And, as stated above, the initial decision is the proper vehicle for considering any modifications which might be required in the FES following trial on the merits of TexPirg's allegations.

Contention 2. Natural gas alternative.

Applicant opposes this contention which seeks to raise the issue of natural gas as an alternative to ACNGS. The contention does not raise an environmental issue ' ' urges a

consideration of natural gas only because of its current and projected future economic advantage. Consideration of alternative sources of energy based on purely economic grounds is not required. Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 161-63 (1978); Order Ruling Upon Intervention Petitions, p. 8 (Feb. 9, 1979).^{*/}

Contention 3. Vertical temperature distribution of the cooling lake.

TexPirg contends that a cooling lake vertical temperature profile has not been considered by the NRC Staff in the assessment of heat loading impacts on the aquatic ecosystem. However, the NRC Staff did in fact request information from the Applicant on this subject. Applicant fully explained in the ER Supplement the basis for predicting that the cooling reservoir will be uniform in temperature throughout the vertical plane (p. SH-129). The Staff then independently concluded that temperature stratification need not be addressed in the FES.

^{*/} The Board has previously rejected a similar contention on the grounds that it was both speculative and failed to allege deficiencies in the Staff's analysis in FES. See Board's Order Ruling on Intervention Petitions, pp. 74-75. This contention is no less speculative and no more specific as to alleged deficiencies.

Rather than stating the specific errors in this analysis,^{*/} TexPirg asserts incorrectly that no analysis has been done. Accordingly, TexPirg's contention is based on a wholly incorrect premise and must be denied as plainly insufficient to present a litigable contention.

Contention 4. Use of cooling lake for ACNGS will violate sections of the Clean Water Act.

The Environmental Protection Agency has issued an NPDES permit (under Section 402 of the FWPCA) for discharge into the ACNGS cooling lake. (See Final Supplement p. 5, F-1). The NRC has recognized that under the provisions of the FWPCA, EPA has jurisdiction to approve the cooling system for a nuclear power plant. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), 7 NRC 1, 26 (1978); NRC's Policy Statement on Implementation of Section 511 of the Federal Water Pollution Control Act (FWPCA), 40 Fed. Reg. 60115 (December 31, 1975). The NRC has no jurisdiction to consider a collateral attack on the legality of the EPA's issuance of a discharge permit for the ACNGS cooling lake.

^{*/} TexPirg does make a vague reference to other lakes but fails to allege, much less demonstrate, that the temperature profiles in these lakes are in any way comparable to the Allens Creek cooling reservoir.

Contention 5. Need for State PUC approval prior to consideration of Construction Permit by the NRC.

Contrary to the statement in this contention, the Public Utility Commission of Texas has issued certificates of convenience and necessity for ACNGS (See ER Supplement p. S 12.1-2). The NRC has no jurisdiction to consider a collateral attack on the legality of the PUC certificates. Moreover, TexPirg is simply wrong in even alleging that State PUC proceedings must be completed and a certificate of convenience and necessity obtained before the NRC may consider an application for a construction permit. While the State has full authority to issue its own permits, the NRC need concern itself only if and when the State of Texas determines that the Applicant should not be permitted to build and operate ACNGS. See, Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-308, 3 NRC 20, 30 (1976). Clearly, this is not the situation here, and the contention must be dismissed.

Contention 6. Energy conservation.

This contention, which alleges that ACNGS is not needed apparently because of future conservation of energy, should be dismissed since energy conservation has been admitted by the Board as an issue in this proceeding as TexPirg Contention 7. Order Ruling Upon Intervention Petitions, pp. 6-7

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(Feb. 9, 1979). The remaining statements made by TexPirg in this contention do not raise any separate issues.

Contention 7. Use of cooling towers instead of the cooling lake.

TexPirg's attempt to raise again the issue of cooling towers at ACNGS should be rejected for the same reasons it was rejected previously; that is, the comparison of environmental impacts of cooling towers with the cooling lake was made in paragraph 64 of the Partial Initial Decision. Order Ruling Upon Intervention Petitions, p. 5.^{*/} In fact, as to subpart (a) of TexPirg's contention the Board concluded that even though the reservoir would use more land and more water, such considerations were of little importance at the ACNGS site. TexPirg has not alleged a single fact challenging the conclusions reached by the Board in the PID, nor can TexPirg avoid the fact that the new reservoir will use even less land and water. Subpart (b) of the contention is already in the case. Subpart (c) is manifestly irrelevant and shows nothing more than that the Applicant always considers the most appropriate

^{*/} As discussed in Applicant's response to Contention 10, this contention is also clearly outside the scope of new contentions which TexPirg was permitted to file by virtue of paragraph 9 of the Board's April 11 Order.

cooling system for its individual power plant sites. Finally, subsection (d), which refers to the cooling lake as violative of the provisions of the FWPCA, should be rejected for the same reasons as discussed in Applicant's response to Contention 4.

Contention 8. Fossil fuel alternatives.

The Applicant opposes this contention. In Part (a) TexPirg attempts to raise an issue concerning the relative cost of procuring gas, coal, lignite and oil as opposed to uranium. Similarly, in Part (b), TexPirg states that because of alleged future unavailability of uranium, fossil fuel alternatives will be economically superior over the life of the plant. Part (c) also seeks a purely economic comparison of alternatives based upon unsupported allegations concerning the cost of reactor safety equipment. Consideration of alternatives solely on economic grounds is improper for the reasons set out in our response to Contention 2.

Parts (d) and (f) also do not state valid contentions. These statements are merely unsupported rhetorical assertions which do not state the basis for any definable factual controversy. To the extent that they attempt to raise an issue concerning Class 9 accidents, they do not adequately present an issue for consideration in this proceeding for the reasons stated in our response to Contention 12.

Contention 9. EPA standard for the uranium fuel cycle.

In its "Additional Contentions" filed on November 2, 1978, TexPirg alleged "that direct radiation dosage at the site boundary, when added to doses from other sources, may violate 40 CFR 190." TexPirg now has repeated this contention, this time dropping the reference to the EPA comment in the Final Supplement to the FES, which prompted the original allegation, and adding vague references to accidents and transportation as additional sources. The Board's response to the original contention is directly applicable to the obvious reiteration:

Since there is no allegation by PIRG that Applicant either will not meet or is unable to meet the criteria of 40 C.F.R. 190 by satisfying the requirements of Appendix I to Part 50, there are no bases for the contention. . . . (Order Ruling Upon Intervention Petitions, p.12).

TexPirg has again failed to provide a sufficient allegation as to the insufficiency of Appendix I compliance and, therefore, the contention must be rejected.

Contention 10. Inability to meet 10 CFR Part 100 and 10 CFR 50, Appendix E.

It is difficult to determine exactly what aspects of Part 100 and Part 50, Appendix E are being challenged here, since there is no reference in the contention to any specific provision. The contention is actually a series of unrelated, vague and confusing allegations which do not define litigable

issues. In addition it appears to challenge the findings of the 1975 Partial Initial Decision (2 NRC 776) on population (paragraph 82), meteorology (paragraphs 131-33), LPZ and population center distance requirements (paragraph 81), and feasibility of emergency plans (paragraph 84), without presenting "newly discovered evidence or a material change in circumstances" on these issues, as required by the Appeal Board in this proceeding. Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, slip op. at 15-16 (April 4, 1979). For these reasons the contention should be rejected.

In addition, Part (a) seems to attack the regulations themselves. The site suitability requirements in Part 100 are not dependent upon the size of the reactor. In any event, the size of the ACNGS reactor has not changed from that described in the PID (2 NRC at 798), and there found to be acceptable.

Part (b) is a vague and unsubstantiated challenge to the ability of this reactor to operate safely without reference to any particular aspect of the Commission's safety regulations which will not be met. TexPirg appears to allege that a new reactor design must be tested by full scale operation before it may be licensed. Such a requirement would virtually preclude the development and licensing of new designs and is contrary to Commission policy. See, Ohio Edison Co. (Erie Nuclear Plant,

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Units 1 and 2) ASLB Order Subsequent to the First Prehearing Conference (August 18, 1977), p. 7.

Part (c) does not appear to even address Part 50, Appendix E or Part 100. The statement is an unsubstantiated assertion concerning normal releases of radiation from the plant. Such releases are covered under Appendix I to Part 50 and no grounds are provided to support a contention that this regulation will not be met.

Part (d) appears to challenge the population projections in the PID (paragraph 82). There is no basis given for the assertion that "during the later stages of operation of the plant much more than 500 people per square mile will live within 30 miles of the plant." The Licensing Board has already found to the contrary, 2 NRC at 798, and no new information is provided to demonstrate that there has been "a material change in circumstances."

Part (e) challenges the adequacy of the Applicant's emergency evacuation procedures on the grounds of heavy automobile traffic. The contention appears, although it is unclear, to seek consideration of evacuation for areas outside the LPZ without a showing of special circumstances which would warrant such extended consideration under recently published Commission guidance. (See response to Contention 36) In any event, the contention does not specify any area beyond the LPZ

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where, in TexPirg's opinion, extended evacuation plans are required, nor does it state why evacuation, as opposed to other emergency procedures, will be necessary. To the extent that this sub-contention seeks to raise an issue relating to Class 9 accidents, it is invalid for the reasons stated in response to Contention 12.

Part (f) states that no "NRC approved" state evacuation plan exists and presumably for this reason, the plant does not satisfy Commission requirements. The regulations do not require NRC "approval" of state plans.

Parts (g) and (h) challenge the Board's findings on meteorology contained in paragraphs 131-133 of the PID. The Staff's analysis of local meteorological conditions, which formed the basis for the Board's favorable ruling, is found in Section 2.16 of the FES. The contention does not state any basis for challenging the adequacy of this analysis or the Board's ruling. In addition, Part (h) attempts to relate the effect of rainfall to exclusion area and LPZ size in some vague manner without specifying a basis for the intended relationship.

Part (i) challenges the determination of the Board in paragraph 82 of the PID that Houston is sufficiently distant from the ACNGS site that "no special circumstances contemplated by 10 CFR §100.11(a)(3) need to be given. . . ." 2 NRC at 798. Nothing is provided to indicate that circumstances have materially changed since this finding was made.

Contention 11. Protection against sabotage.

The contention should be dismissed since it does not allege in what specific respects the Applicant will not comply with the provisions of 10 C.F.R. Part 73 of the Commission's regulations relating to the physical protection of nuclear power plants. The ASLB has previously dismissed a similar contention asserted by TexPirg. See Order Ruling Upon Intervention Petitions, pp. 3-4.

Contention 12. Class 9 accidents.

This contention is actually a request to consider Class 9 accidents in this licensing proceeding without any factual "showing that with respect to the reactor in question, there is a reasonable possibility of the occurrence of a particular type of accident generically regarded as being in Class 9." Long Island Lighting Co. (Shoreham Nuclear Power Station), 6 AEC 831, 836 (1973). Pursuant to Commission guidance, Class 9 accidents need not be considered unless such a particularized showing is made.

The contention also makes reference to recent events involving the Three Mile Island plant. The complexities of that incident are currently being examined in detail by the Commission, and by Congress and other groups. See, e.g., Exec. Order No. 12130, 44 Fed. Reg. 22,027 (April 13, 1979) (announcing the formation of the President's Commission on the Accident

at Three Mile Island); Committee on Interior and Insular Affairs, U.S. House of Representatives, News Release (May 4, 1979) (creating a task force of Committee members to investigate the accident at Three Mile Island); 44 Fed. Reg. 19,262 (April 2, 1979) (notice of first meeting of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on the Three Mile Island Nuclear Station, Unit 2). If any change in the Shoreham principle should be required as a result of these efforts it must be presumed the Commission will make it. See Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Station), ASLB Memorandum and Order Concerning Motions to Postpone Evidentiary Hearing, slip op. p. 3 (May 11, 1979). Until then, however, a discrete licensing proceeding is not the vehicle for abandoning Shoreham.

Contention 13. Extended storage in the Spent Fuel Pool.

This contention challenges the adequacy of the FES with regard to the alleged possible need for long term storage of spent fuel at the ACNGS site. As the Board has previously ruled in rejecting identical contentions raised by five other petitioners, Appendix I calculations include doses from spent fuel stored at the site and therefore the contention is either an impermissible challenge to the regulations or lacks a basis for challenging Applicant's compliance with Appendix I. Order Ruling on Intervention Petitions, p. 66. Moreover, the Appeal

Board has held that consideration of the need for long term storage of spent fuel at the site is not required under NEPA in view of the Commission's "findings of reasonable assurance that methods of safe permanent disposal. . . can be available when they are needed." Northern States Power Co. (Prairie Island, Units 1 and 2), ALAB-455, 7 NRC 41 (1978).*/

The contention also raises the issue of a meltdown of the spent fuel pool analyzed in the "German Study, Working Report #290." As is demonstrated in the Staff's response to an almost identical contention submitted by another petitioner in this proceeding, the cited study has been thoroughly repudiated by the German agency that issued it. NRC Staff Response to Additional Contentions Filed by the Framson', dated May 2, 1979, pp. 1-2. A revision of the study concludes that "a melt accident is out of the question for the fuel element pool. . . ." Id.

*/ On May 23, 1979, that decision was remanded to the Commission "for clarification and consideration in the light of a related proceeding and other current developments." State of Minnesota et al. v. United States Nuclear Regulatory Commission et al., United States Court of Appeals for the District of Columbia Circuit Nos. 78-1269, 78-2032, Slip op. pp. 3, 16. However, the court did not set aside or stay the license amendments involved and rejected the claim that the environmental and safety effects of storage of spent fuel in the storage pool should be considered in an adjudicatory proceeding. Slip op. p. 15. The court pointed out that the matter might quite appropriately be addressed in a "generic" proceeding which would presumably be a rule-making proceeding. Slip op. p. 11.

Contention 14. Constitutionality of the Atomic Energy Act.

This Board does not have jurisdiction to consider the constitutionality of the Atomic Energy Act. It is well established that an administrative agency has no authority to rule on the constitutionality of the statutes it administers -- this job is for the courts. Engineers Public Service Co. v. SEC, 138 F.2d 936, 952-53 (D.C. Cir. 1943), dismissed as moot, 332 U.S. 788 (1947); Panitz v. District of Columbia, 112 F.2d 39, 41 and n. 13 (D.C. Cir. 1940). In any event, the Supreme Court of the United States has held that the Price Anderson Act, 42 USC §2210 et seq., which limits the liability of all private operators of nuclear reactors, is constitutional. Duke Power Company v. Carolina Environmental Study Group, 98 S.Ct. 2620 (1978).

Contention 15. Occupational exposure.

TexPirg attempts to compare one estimate of occupational exposure from an unlikely source (the "GESMO Report of 1976") to figures in an article reflecting actual measurements. TexPirg draws from this comparison that "measured exposure has been recorded about 3 times estimated exposure." What TexPirg fails to realize is that it is comparing apples and oranges. The proper comparison should be between the estimate of occupational doses set forth in the FES and FSFES (p. 5-8 and S. 5-29,

respectively) and any pertinent measured exposures. The anticipated doses for ACNGS are estimated to be 100 man-rem per year. Actual recorded exposures from 1969 to 1976 ranged from 178 to 594 man-rem per reactor year average for light water reactors. "Occupational Radiation Exposure At Light Water Cooled Power Reactors," NUREG-0323, p. 4 (1976). This NUREG publication is the source of information relied upon in the article cited by TexPirg. Thus, TexPirg is half-right in the data base used, but is completely in error in the comparison it makes since the "GESMO Report" has nothing to do with the estimates used for ACNGS*/. The proper comparison shows that estimated and recorded historical values are very close. The contention should be dismissed as unfounded.

Contention 16. Using Wallis as the population center.

The Applicant opposes this contention, which challenges the Licensing Board's findings in the PID (see 2 NRC at

*/ TexPirg's "GESMO" estimate value is reported in units of man-rem per GW(e)-year--a ratio between exposure and electricity generated, while the FES estimate is in units of man-rem per reactor year--a ratio between exposure and time. If the measured NUREG figures are converted to man-rem per GW(e)-year units, the values average about 1,100 (see Table 1, NUREG 0323). Hence, TexPirg may be correct that the GESMO estimate is low by a factor of 3 (570 compared to 1,100), but that, of course, has nothing to do with ACNGS.

798) without alleging any new information to support the challenge. The projected population of Wallis was reevaluated in the Safety Evaluation Report, Supplement 2, p. 2-2 without changing the conclusions reached in the PID. TexPirg has set forth absolutely no basis for a contention that this town will increase by 25 times in population over the life of ACNGS.*/
Contention 17. Rupture of six-inch LPG pipeline.

TexPirg contends that the proximity of a six-inch liquid petroleum gas pipeline (at its closest approach, about 7000 feet away) poses an unacceptable explosion hazard. As documented in Supplement No. 2 to the SER at page 2-9, Applicant has committed to relocation of the pipeline if additional analysis or alternate physical measures (such as interception dikes or revetments) do not provide an adequate safety assurance. This commitment removes the source of TexPirg's concern and leaves nothing further to litigate.

Contention 18. Differential post-construction settlement.

Without mention of any supporting bases, TexPirg hypothesizes problems with differential settlement between the reactor building and other seismic Category I structures if

*/ TexPirg has not even identified the "large intercontinental [sic] airport near the plant." As documented in Section 2.2 of the SER, Supp. 2, there is no such airport nor any plans for one.

"the reactor sunk 18 inches as the South Texas reactor already has." The contention is based on both speculation and the absolutely false premise that the South Texas Project containment has sunk 18 inches. The assertion as to STP is totally unsubstantiated. The STP Containment has settled well within the predicted six inches (see STP FSAR Section 2.5.4.10.3). Even if TexPirg's factual assertion was correct, it has neither shown nor alleged a correlation between the soils and construction at Allens Creek and at the South Texas Project, nor does it focus on the key issue of differential settlement. TexPirg has alleged nothing that could possibly displace Applicant's detailed analysis which concluded that the "differential anticipated between seismic Category I structures are on the order of 1/2 inch or less and the piping and other significant umbilical connections between Category I structures will be designed to accommodate one inch of differential movement." (PSAR Section 2.5.4.10.2). Accordingly, this proposed contention must be dismissed as totally without basis and totally speculative.

Contention 19. Availability of documents.

The "contention" does not set forth a material issue of fact suitable for litigation in this proceeding.

Contention 20. Computer program.

TexPirg alleges the computer program used to calculate the seismic stresses on the containment and reactor is

defective because (1) "it subtracts forces when they should be added" and (2) uses the square root of the sum of the squares method to sum forces. There are two fatal flaws in TexPirg's allegations. First, the general charge that Applicant uses improper mathematics in cumulating stresses is totally meaningless. TexPirg does not indicate in what manner, under what conditions, or for what purpose Applicant "subtracts" when it is correct to "add". This general allegation is no better than a bald assertion that the computer program is "wrong". Without greater specificity, this amorphous challenge can not be entertained.

The attack on the square root of the sum of the squares methodology is similarly devoid of any particularization and basis. TexPirg in no way explains or alleges why this method is unreliable or why the "actual sum"*/ method is the most conservative in all cases. It is incumbent on TexPirg to allege sufficient facts to raise at least an inkling of the source of dispute. TexPirg has failed to do so and its conclusory statements must therefore be disregarded.

*/ Applicant is unfamiliar with this terminology, but supposes that TexPirg refers to the absolute sum computation.

Contention 21. Full scale testing of ECCS.

TexPirg's allegation in this contention that the ECCS has not been demonstrated effective by the "majority of the evidence" is a direct challenge to the Commission's ECCS regulations set forth in 10 CFR §50.46 and Appendix K to Part 50. Under the procedures provided in 10 CFR §2.758 a party may not challenge the validity of an NRC rule in a licensing proceeding. If that party seeks a waiver or exception of that rule under §2.785(b), he must demonstrate "special circumstances." Since TexPirg has done nothing more than make a generalized complaint about ECCS testing this contention is inappropriate for this proceeding. See, Ohio Edison Co. (Erie Nuclear Plant, Units 1 and 2) ASLB Order Subsequent to the First Prehearing Conference (August 18, 1977), at p. 7, where the Board rejected a very similar contention.

Contention 22. Control room indicators.

The contention is without basis and lacks minimal specificity. The features of the control room which are allegedly "not sufficient" are not identified and the relationship between the PCNGS control room and the Three Mile Island control room is never identified nor described.

Contention 23. Appendix I releases.

The contention is nothing more than a conclusory assertion, wholly without any proffered support. It must be

rejected as lacking the specificity required for a valid contention.

Contention 24. Testing of safety features and components.

The contention refers to unidentified "features or components" of ACNGS and states "they cannot be proven safe nor properly designed. . . before completion of construction." It is impossible to determine the "features or components" complained of and, accordingly, the contention is impermissibly vague. More importantly, the contention complains of the fact that the unidentified components have not "actually been tested in a full-scale reactor. . . under design bases accident conditions," and thus suggests imposition of conditions which are not required by NRC regulations, as discussed in the response to Contention 10.

Contention 25. Technical qualifications.

While Applicant strongly disagrees with the allegations in this contention, many of which border on libel, it is sufficient to state that the subject matter of the proposed "contention" is plainly not qualified for consideration under the Board's instructions in paragraph 9 of the Memorandum and Order issued April 11, 1979. In response to ALAB-535, the Board extended opportunities to the different parties to avail themselves of various forms of relief. TexPirg was given an opportunity to "assert any additional contentions they might

have advanced but for the imposition of" the limitations in the hearing notices. This contention does not fit that mold.

Any concern generated by the construction history of the South Texas Project would naturally have to arise after the date construction began. The STP construction permit was issued in December, 1975. Hence, the relevance of matters occurring at the STP site would have qualified as "new evidence or information" under any possible construction of that term. Indeed, this exact point was made by the Board in admitting TexPirg's contention that the South Texas site is an obviously superior alternative to the Allens Creek site. Order Ruling Upon Intervention Petitions, p. 4. TexPirg has not, and indeed could not have, argued that it was inhibited in any fashion from presenting the contention before now. TexPirg has failed to follow the Board's explicit instructions without a word of justification for what is otherwise an unacceptable late filing. Since TexPirg has offered no reason why this contention should be considered, it should be disregarded.

Contention 26. Financial qualifications.

Setting aside the entirely speculative nature of the major premise in this contention (i.e. the poor record at STP impugns Applicant's financial qualifications),^{*/} this contention

^{*/} Applicant would also note that there is no relationship between cost forecasts and financial qualifications.

can not be entertained for the same reasons 25 must be dismissed: TexPirg has no license to expand the scope of contentions at this late date beyond the parameters specifically allowed by the Board or the Commission's regulations. TexPirg has not attempted to comply with either in this regard and the contention must therefore be rejected.

Contention 27. Heavy metal contamination.

TexPirg attempts to convey some concern over the introduction of heavy metals from the cooling lake into the Brazos River and hence into stored oil and/or the Gulf of Mexico. The exact nature of TexPirg's concern is impossible to decipher from its garbled recitation. In any event, it appears to be squarely predicated on a "plan to place heavy metals . . . from Allens Creek cooling pond into the Brazos River." The rest of the baffling statements are irrelevant in light of the fact that TexPirg has not identified such a "plan" nor asserted the slightest basis for such an expectation. The only identified source of heavy metals in the cooling lake is from the Brazos River and its tributary. (See FSFES p. S.5-19 & 20). TexPirg has not challenged this assessment. It is difficult to imagine the materialization of the highly speculative and tenuous chain of events TexPirg postulates when the initiating phenomenon is completely unsubstantiated and appears to be the reverse of

what it has claimed. TexPirg's Contention 27 should be rejected as incomprehensibly vague, speculative, and contradictory on its face.

Moreover, this contention clearly arose after June, 1978 (the date of the referenced environmental statement) and hence is not of the variety that can be considered under the Board's instructions without proper justification for late filing (see response to Contention 25). For this additional reason, this contention must be disregarded.

Contention 28. Use of intensity VII of the Modified Mercalli Scale as the Safe Shutdown Earthquake.

This contention should be dismissed because TexPirg has provided no additional information to challenge the conclusions reached by the ASLB in paragraphs 124-130 of the PID establishing the safe-shutdown earthquake. (2 NRC at 810-11) TexPirg simply takes issue with the Staff's characterization in the SER of the 1891 Rusk earthquake without providing any basis to challenge this characterization.

Contention 29. Redundant hydrogen recombiners.

TexPirg calls for two "recombiners and lead shielding in place at ACNGS to provide the 'active redundancy' considered important in Section 6.2.5. of the Supp. #2 of the SER." Applicant agrees and in Amendment 46 to the PSAR, dated July 14, 1978, provided for "two redundant recombiners permanently

installed inside containment." Staff's contrary statement in the SER supplement appears to be an oversight on its part and will no doubt be corrected in an errata publication. TexPirg's contention is understandably misconceived but undeniably moot.

Contention 30. Charcoal absorber water sprays.

TexPirg's contention on fires in the charcoal filters of the Standby Gas Treatment System is identical to McCorkle Contention 17. Both contentions stem from the absence of water sprays and compliance with Regulatory Guide 1.52. TexPirg and Ms. McCorkle should be consolidated as parties with regard to this contention for the presentation of evidence, cross-examination, briefs, proposed findings of fact, and conclusions of law and argument.

Contention 31. Compliance with Appendix I.

Relying on three publications and speculation that "the recent Three Mile Island incident may press Congress into lowering these Appendix I standards," the contention asserts that the gaseous radwaste system at ACNGS will not be able to accommodate more stringent requirements. ACNGS complies with Appendix I, and that is the governing regulation. Discussion of compliance with future regulations presents no litigable issue. In fact, the Board reached this exact same conclusion with regard to a previously raised contention concerning radwaste system "margins for growth" and extensive modifications

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"if regulations for radioactive emissions are charged." Order Ruling Upon Intervention Petitions, p. 72.

Contention 32. SDVT float switches.

TexPirg is partially correct in stating that the float switches used in four earlier BWR designs have had failures. But the problem of those failures does not reach Allens Creek. The ACNGS design does not use the self-equalizing float switches which failed at other BWR's and TexPirg cites nothing to support a contention that switches used in the ACNGS design might fail. This change in design alleviates the problem and removes TexPirg's allegation of defect.

Contention 33. Generic issue A-11.

To the extent TexPirg alleges that there is no reasonable assurance that the Allens Creek Nuclear Generating Station, Unit 1, may be constructed and operated prior to the ultimate resolution of this generic issue without endangering the health and safety of the public, Applicant agrees that this contention meets the minimum requirements for presenting a litigable issue.

Contentions 34 and 48. Hydrogen monitoring.

In these two contentions, TexPirg contends that Applicant's systems for detecting the potential and occurrence

of hydrogen*/ explosions are inadequate. The sole basis for TexPirg's concern in both instances is "t'e recent Three Mile Island incident." TexPirg does not explain, however, why this incident reflects on the adequacy of hydrogen monitoring at ACNGS. TexPirg alleges that "current approved containment building monitoring apparatus did not bring such an event to the attention of operators immediately." TexPirg does not allege, as it cannot, that the "approved containment building monitoring" at TMI-2 in any way resembles the system design for ACNGS; TexPirg does not acknowledge, or perhaps does not understand, the significant differences in the engineering and performance between a PWR (TMI-2) and a BWR (ACNGS)--particularly the radical differences in containment design. In order to frame an acceptable contention of this sort, TexPirg must challenge the present eight hydrogen sampling subsystems for detection of hydrogen in the containment and drywell (see PSAR Section 7.5.1.4.2.11) with reasonable specificity. Merely raising the spectre of Three Mile Island is plainly insufficient. TexPirg's contentions must be dismissed for lack of any supporting bases.

*/ TexPirg refers to "non-condensable gas" in Contention 48; but since hydrogen is the only non-condensable which poses a "chance of an explosion" Applicant infers that both contentions address hydrogen gas problems.

Contention 35 "High flux" pressure relief valves.

TexPirg alleges some connection between "poor performance of radiation monitors" and pressure relief valves. Apparently TexPirg holds the erroneous belief that a high flux signal actuates certain pressure relief valves. Applicant cannot discern any possible contention in this confused discussion of the relationship between flux signals and pressure relief when none exists. Pressure relief valves actuate only on actual high system pressure (ranging from 1,103 psig controller set pressure to 1,190 psig spring set pressure) or signals from (a) drywell high pressure or (b) reactor vessel low water level in conjunction with output pressure from at least one LPCI or core spray pump. (PSAR Section 5.2.2.2.3 and Table 5.2-6). Given these uncontroverted facts, TexPirg has fallen far short of framing an understandable contention.

Additionally, TexPirg's supporting references make clear that this concern was documented by alleged "new evidence" in 1978 and 1979. Therefore, in accordance with the Board's Order of April 11, 1979, TexPirg cannot submit this contention for consideration without addressing the factors justifying a late filing. This contention is unacceptable for the same reasons that Contentions 25, 26 and 27 failed.

Contention 36. Adequacy of emergency plans.

This contention seeks to require the Applicant to

develop and prove the feasibility of emergency evacuation plans for an area well outside the low population zone. Pursuant to recent Commission guidance on emergency plans, an applicant need develop plans for areas outside the LPZ only if special circumstances exist which warrant such extended consideration. 43 Fed. Reg. 37473, 37475 (August 23, 1978); Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ASLB Prehearing Conference Order Ruling Upon Intervention Petitions, pp. 60-61 (April 3, 1979). No special circumstances are alleged here, and the contention is therefore inadmissible.

Intervenors contend that "Applicant has not developed in the PSAR" those aspects of an emergency plan which are required by 10 CFR Part 50, Appendix E. The Applicant's analysis of emergency plans is contained in §13.3 of the PSAR. TexPirg does not identify in what respects this analysis fails to comply with the provisions of Appendix E. Accordingly, the contention is inadmissible for lack of specificity.

Contention 37. Hydrogen explosions in off-gas system charcoal adsorbers.

TexPirg's contention on off-gas explosions is totally subsumed in Shreffler Contention 2, which was adopted as a Board Question in an Order entered by the Board on April 13, 1979. The Board pointed out to TexPirg in that Order that all parties have a right to full participation with regard to Board

Questions. TexPirg's suggested additions to the off-gas system are no more than one proposal to "meet the current requirements of the Commission with respect to standards for combustible gas control." (See Order Ruling Upon Intervention Petitions, p. 71). Thus, TexPirg's contention is not an independent allegation. TexPirg will have ample opportunity to present its proposal as part of its affirmative evidence on Shreffler Contention 2.

Contention 38. Screening of plant employees.

Relying, without any supporting basis, upon the assumption that "there are cancer prone individuals" and that such persons may become applicants for employment at the facility, the contention states that Applicant "should agree to . . . a screening process" to avoid hiring such persons. The contention is remote speculation. Applicant will comply with such regulations as govern the acceptability of employees at nuclear reactor facilities. The Board has rejected quite similar arguments "that an individual's susceptibility is increased by factors such as poor health, disease, pregnancy, and genetic defects." The Board was correct that this type of contention is "an impermissible challenge to NRC regulations" Order Ruling Upon Intervention Petitions, p. 33.

Contention 39. Redundancy in spent fuel cooling system.

While it is true that the ACNGS spent fuel cooling

system is not completely redundant (all active components-e.g. pumps-are, some passive components-e.g. heat exchangers-are not), that fact alone is insufficient to form an adequate contention. TexPirg must also allege some colorable basis for assuming that a fully redundant cooling system is needed. Applicant has demonstrated in its safety evaluation that decay heat generation poses no problem as long as the irradiated fuel is submerged in water. Redundancy of the heat removal mechanism is provided by the make-up of water lost due to fuel pool heat-up from either of two safety-grade sources. TexPirg does not dispute this finding. The Spent Fuel Pool is conservatively designed to maintain a safe water level, totally independent of the cooling system, and in complete compliance with the 10 CFR 50, Appendix A, General Design Criterion 61 and Regulatory Guide 1.13. (PSAR Section 9.1.3.3.). TexPirg has not shown any reason for believing that an additional cooling system is necessary or desirable and its contention must be dismissed as groundless.

Contention 40. Plant piping ultimate yield strength.

For reasons not fully understood by the Applicant, TexPirg contends that a pipe burst LOCA is less of a hazard than a reactor vessel burst LOCA and, accordingly, that the ultimate yield strengths should be fixed to guarantee that a pipe will burst before the vessel does. This is an interesting

approach to pressure relief operation. However, the Applicant (and, apparently, the Commission) prefers the use of pressure relief valves and has provided for nineteen of them. Since the set points of these relief valves are well below the design pressure of all components of the reactor coolant pressure boundary, TexPirg's suggestion misses the point entirely. This contention should be dismissed for failure to frame a realistic controversy.

Contention 41. Survey of growth faults.

TexPirg's claim that it will suffer "economic injury" if ACNGS is constructed without a better survey of growth faults in the site area is an injury which is not cognizable by this Board and on this basis the contention should be dismissed. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2) CLI-76-27, 4 NRC 610, 613-14 (1976); Order Ruling Upon Intervention Petitions, p. 18 (Feb. 9, 1979). The contention is likewise inadmissible as a health and safety issue since the question of "growth faults" in the ACNGS site area was previously considered by the Board in great detail in the Partial Initial Decision (¶s 108 & 109, 2 NRC 804-05) and TexPirg has alleged no new information which would challenge the Board's findings on this question.

Contention 42. Natural gas alternative.

This contention is nearly identical to Contention 2, and Applicant opposes it for the reasons stated therein.

Contention 43. Tornado missile design for charcoal tanks.

TexPirg alleges that Applicant has shown no basis for the conclusion that a rupture of the off-gas charcoal tanks would result in offsite exposures that are a small fraction of 10 CFR 100 guidelines. The facts are decidedly the opposite. In PSAR Section 15.1.36 Applicant has set out in detail the assumptions, methods, conditions, and calculation results showing that the instantaneous and simultaneous failure of all gaseous radwaste processing equipment will not exceed the Part 100 doses. (See particularly Table 15.1.36-2.) TexPirg's weak assertion that these results have no basis must be dismissed as groundless.

Contention 45. Mysterious plane crashes.

TexPirg suggests that planes flying over nuclear power plants have experienced a phenomenon described as "latching" -- a disturbance of guidance systems causing crashes. Absolutely no factual underpinning is provided to establish the alleged causal relationship and the contention is therefore without any basis.

Contention 46. Relief valve failure.

To the extent TexPirg contends that a commitment should be made to either (a) select and use the relief valve design with the least recorded failures or (b) use a variety of designs, Applicant agrees that this contention meets the minimum requirements for presenting a litigable issue.

Contention 47. Outside containment coolant sampling.

To the extent TexPirg contends that a commitment should be made to provide for reactor coolant sampling outside the containment, Applicant agrees and has plans to incorporate such a system into the ACNGS design. Thus, there is no controversy for litigation.

Contention 49. Water level indicators.

TexPirg's contention on water level indicators appears to have two parts. The first asserts that water level indicators generally are unreliable. It is impossible for Applicant to respond to such a barren and conclusory statement without some reasonably specific clarification of how the alleged failures indicate that the water level instruments designed for ACNGS are similarly inadequate. Without this correlation, reference to other failures is meaningless.

The second part of TexPirg's contention proposes an accident scenario initiated by a combination of MSIV closure, scram, and water level indication "stuck on low." TexPirg does not hint what would cause an erroneous low level indication or why it would not return to the proper reading. Moreover, the only consequence of this unexplained hypothetical is that "the operator would naturally increase the feedwater pumpflow [sic]." Applicant cannot understand what would be "natural" about such actions after a MSIV closure and scram; but, more importantly,

the "how" of such actions is even more puzzling given that by hypothesis the steam driven feedwater pumps have been deprived of their motive force when the MSIV's closed. Any further attempts to discern the sense and import of this contention would be futile since it is obviously without support or reasoning.

Contention 50. Reactivity insertion.

TexPirg hypothesizes a steam line break accident that "draw[s] coolant water into the reactor." The hypothetical is too unspecific and vague to warrant a response. Applicant cannot imagine from where the coolant will be "drawn", nor why it will flow in this fashion, nor why the depressurization and high temperatures will not flash the water in the core -- from whatever source -- into steam and hence result in negative reactivity insertion exactly as predicted for all other steam line break accidents analyzed. Perhaps TexPirg is employing a principle of physics, thermodynamics or fluid flow that the Applicant is not aware of, but it has not explained this phenomenon sufficiently to support a litigable issue.

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