UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of	)	
	)	
Houston Lighting and Power Company, et al	)	Docket Nos. STN 50-498OL STN 50-499OL
	)	
(South Texas Project, Units 1 and 2)	)	

MOTION TO RECONSIDER

Citizens Concerned About Nuclear Power, Appellee, respectfully moves this honorable Atomic Safety and Licensing Appeal Board to reconsider its order of May 7, 1979 wherein it denied Appellee's Motion to Strike Notice of Appeal and Preceding Brief for the following good and sufficient reasons:

I.

In its decision, this honorable Appeal Board placed great emphasis upon Appellee's reliance on 10 CFR Sections 2.762 and Appendix A Section IX(d)(2) for establishing the standards for exceptions and briefing.

This honorable Board stated that 10 CFR Sections 2.762 and Appendix A Section IX(d)(2) was inapplicable and that 10 CFR Section 2.714a controlled this appeal.

10 CFR Section 2.714a serves as an exception only to 10 CFR Section 2.730. It serves as an exception as to the appealability of an interlocutory order. 10 CFR Section 2.730 establishes absolutely no standards for exceptions and briefs filed in support of exceptions. Nor does 10 CFR Section 2.714a set forth any standards for exceptions or briefs filed in

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support of those exceptions. 10 CFR 2.714a does not supersede 10 CFR 2.762 and Appendix A Section IX(d)(2) except in that it alters the time for filing briefs and should not be cited for the proposition that there are no standards for exceptions and briefs filed in an appeal permitted by 10 CFR Section 2.714a.

To do so would be an unfortunate precedent. Appellants in this case have done nothing more that the equivalent of stating that the trial court erred in finding for the plaintiffs. Such a broad exception without particularization places an undue burden on the Appelate Board and the Appellee to ascertain exactly what is being urged on appeal. It should not be the burden of the Appelleeto have to guess at the contentions being set forth on appeal. However, when such vague and indefinite briefing requirements and such vague and indefinite exception requirements are permitted, that is precisely what has happened in this case.

The rules governing exceptions and briefs filed in support of exceptions are presumably stated in order that all parties will know exactly what is being argued in any particular appeal. Surely this desire for clarity would apply equally to all appeals. See Consumers Power Company, ALAB-270, 1 NRC 473 (1975).

Analogy should be made to federal practice. Under federal practice, the general rule is that only final judgements are appealable. However, exceptions are made to this rule and certain designated interlocutory orders are appealable. However, the format, the requirements for briefing, and the specificity of briefing are not changed merely by the fact that it is an interlocutory appeal rather than an appeal from a final judgement.

It would not make sense for any such exception to exist nor does it make rational sense for any such exception to exist within the rules of the Nuclear Regulatory Commission.

The rules of practice provide for certain exceptions to the general rule that only final judgements are appealable. But they do not set forth different briefing standards than are required for an appeal from a final judgement.

> "The Rules of Practice were not promulgated capriciously. They were drafted to insure that, when followed, the arguments and positions of all parties - applicants, staff, and intervenors - would be spread fully upon the record in order to permit fair rebuttal by those holding opposing views and to facilitate our ultimate evaluation of the competing contentions. Disregard of the Rules frustrates those salutary purposes and burdens rather than assists the adjudicator's task." Consumers Power Company, supra at 476.

There is no basis to believe that any less stringent requirement is needed on an interlocutory appeal that on an appeal from a final judgement.

WHEREFORE PREMISES CONSIDERED, Appellee respectfully reurges each and every element stated in its Motion to Strike the Appeal and Preceding Brief filed on May 1, 1979.

Should this motion to reconsider be denied, Appellee specifically requests a clarification of just precisely what the briefing standards and notice of appeal standards are for one appealing from a pre-conference hearing order.

Respectfully submitted,

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