

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

NRC PUBLIC DOCUMENT ROOM

IN THE MATTER OF

§

TEXAS UTILITIES GENERATING COMPANY,
ET AL

§

DOCKET NOS. 50-445
50-446

(Comanche Peak Steam Electric
Station, Units 1 and 2)

§

BRIEF OF INTERVENORS,
ACORN, MARY AND CLYDE BISHOP,
AND ODA AND WILLIAM WOOD



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DATED: MAY 30, 1979

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Intervenors, ACORN, MARY and CLYDE BISHOP, and ODA and WILLIAM WOOD, by and through their attorneys of WEST TEXAS LEGAL SERVICES, respectfully submit these comments as a brief on the applicability of Houston Lighting and Power Company, et al (South Texas Projects, Units 1 and 2), ALAB-549, (May 18, 1979), to the standing of Intervenors in this proceeding.

The May 18, 1979, Opinion of the Atomic Safety and Licensing Appeal Board in Houston Lighting and Power Company, et al addresses timely filings with regard to the right to participate in a given case. The Appeal Board indicates throughout it's Opinion that the standing of late Intervenors should be judged by considerations of fairness and not legal technicalities and the niceties of pleadings. (Page 9, Lines 4 through 10, and Page 11, Lines 4 through 8). Fairness dictates involving parties with interests where that involvement does not delay or otherwise adversely

affect the timely and orderly conduct of proceedings. (Page 9, wherein the Appeal Board quotes from the West Valley Opinion).

The HL&P Opinion gave consideration to the fact that the facility was not on the verge of completion. The Board noted, "No suggestion is put forward that the conduct of a public hearing would delay licensing the plant for operation (assuming this is found to be warranted)". (Page 10, Lines 1 through 5). Those comments have greater applicability to the Comanche Peak situation than the South Texas situation. Unit 1 of the South Texas facility is scheduled for completion in May, 1980. TUGCO representatives at the first prehearing conference asserted that Comanche Peak Unit 1 should be ready for loading of fuel in March, 1981. As in the HL&P situation, Applicants herein are in no position to complain that they were surprised by the appearance of any Intervenor, or that the commencement of proceedings would be unreasonably delayed by permitting intervention. (Page 9, Lines 15 through 18).

Acceptance of Applicants technical arguments would deprive parties of their statutory right to amend their pleadings prior to the first prehearing conference. But in light of the HL&P Opinion, the licensing Board should not have to give consideration to Applicants technical arguments that affidavits supplied after the initial motion for leave to intervene make it possible to characterize Intervenors as "late", because fairness requires

acceptance of Intervenor.

Neither the Applicant nor the staff should be permitted to complain of the "lateness" of Mary and Clyde Bishop and Oda and William Wood, or ACORN. Correspondence from Harold Denton to the Commissioners on the day following the HL&P Opinion indicates that it is advisable for the staff to suspend review of the Comanche Peak operating license until January, 1980. ("Interim NRC Organization to deal with impact of TMI-2 and other NRR priority task", SEC(79-344). Both the Applicant and the staff realize that the possible operation of Comanche Peak is several years in the future. Acceptance of ACORN, Mary and Clyde Bishop, and Oda and William Wood as Intervenor would not delay an early consideration of TUGCO's early application for an operating license, and intervention certainly would pose no delay if the Commissioner's accept Harold Denton's suggestions for reorganizing the NRC staff to deal with the Three Mile Island incident.

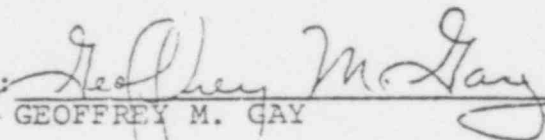
The impact of the Appeal Board decision in HL&P suggests the tremendous importance of public participation in the NRC process. Even when Applicant's view of the law is accepted arguendo (as the Appeal Board did on Page 8 of the HL&P Opinion) a balance must be struck in favor of the admission of Intervenor. The concept of fairness overrides legalistic and technical arguments, and even if one assumes the "lateness" of Intervenor petitions there is no requirement for an overwhelming showing on the four factors governing late interventions as set forth in 10 C. F. R. Sec. 2.714(a). (Page 10, Lines 6 through 13). The Appeal Board

in HL&P agreed that CEU's intervention was appropriate even though the "petition was five months late without good cause" (Page 13, Lines 4 and 5), because another party had been allowed to intervene and there would be no prejudice to the Applicant. The party upon whom CEU's petition was contingent did not submit an affidavit demonstrating interest of at least one member until after the first prehearing conference. The rationale, logic, and principles of fairness underlying the HL&P Opinion require acceptance of both ACORN and the parties named in substitution of West Texas Legal Services, Mary and Clyde Bishop and Oda and William Wood.

Respectfully submitted,

WILLIAM L. GARRETT
GEOFFREY M. GAY
West Texas Legal Services
406 W. T. Waggoner Building
810 Houston Street
Fort Worth, Texas 76102
(817) 336-3943

ATTORNEYS FOR INTERVENORS

By: 
GEOFFREY M. GAY

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CERTIFICATE OF SERVICE

I hereby certify that copies of the "Brief of Intervenor, ACORN, Mary and Clyde Bishop, and Oda and William Wood" in the above captioned proceeding have been served on the following by deposit in the United States Mail, Certified, Return Receipt Requested, this 1st day of June, 1979.

Lawrence J. Chandler
Counsel for NRC Staff
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

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

Elizabeth S. Bowers, Esq., Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Atomic Safety and Licensing Appeal
Panel (5)
U.S. Nuclear Reg. Commission
Washington, D. C. 20555

Lester Kornblith, Esq., Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Docketing and Service Section (4)
Office of the Secretary
U.S. Nuclear Reg. Commission
Washington, D. C. 20555

Richard Cole, Esq., Member
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

(Mrs.) Juanita Ellis, President
CASE
1426 S. Polk
Dallas, Texas 75224

Nicholas S. Reynolds
Debevoise & Liberman
1200 17th St., N.W.
Washington, D. C. 20036

Mr. Richard Fouke
1668-B Carter Drive
Arlington, Texas 76010

Richard W. Lowerre, Esq.
Assistant Attorney General
Environmental Protection Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711

Spencer C. Pelyea
Worsham, Forsythe & Sampels
2001 Bryan Tower
Dallas, Texas 75201

Mrs. Nancy Eleanor Jacobson
CFUR
1400 Hampshire Street
Fort Worth, Texas 76104

337 266

Geoffrey M. Gay
GEOFFREY M. GAY
Attorney for Intervenor