

6-28-79

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

HOUSTON LIGHTING AND POWER COMPANY)

(Allens Creek Nuclear Generating)
Station, Unit 1))

Docket No. 50-466

APPLICANT'S MOTION FOR
FURTHER PROCEDURES RELATING
TO TEXPIRG INTERVENTION



Applicant moves the Board for an order directing Intervenor Texas Public Interest Research Group (TexPirg) to provide the Board and the parties with information identifying the proper and authorized representative or representatives of TexPirg for purposes of this proceeding.

As a matter of background, Applicant, on June 21, 1979, filed a motion requesting the Board to order TexPirg to resubmit its answers to Applicant's and Staff's interrogatories under oath or affirmation and to provide further answers to certain of Applicant's interrogatories. In this motion (pp. 2-5), Applicant noted that Mr. John Doherty, in his sworn deposition of March 26, 1979, had stated that he was authorized to speak for TexPirg (Deposition, pp. 9-11). Further, in an answer (dated March 27, 1979) to a question set forth in Applicant's first set

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of interrogatories to TexPirg to identify the names and addresses of TexPirg's "officers" and directors, Mr. Doherty was identified as the "Acting Research Director." Mr. Doherty signed TexPirg's answers to these interrogatories as "Executive Director" of TexPirg.

Although Mr. Doherty clearly held himself out as a spokesman for TexPirg in his March deposition, and in answers to interrogatories, he subsequently disclaimed in a letter to the Board dated May 10, 1979, that he was an "officer" of TexPirg. However he did not state whether or when a change in his status as an officer had occurred and never identified his successor. To compound this confused situation, Mr. Scott, TexPirg's counsel, declared in answers filed on June 6, 1979, to Applicant's second interrogatories, that "Mr. Doherty does not work for TexPirg anymore and was not authorized [in his March 26 deposition] to say that TexPirg was not concerned about chlorine discharges. . . ." (p. 3). The obvious implication of this statement is that Mr. Doherty was not authorized to make on behalf of TexPirg any of the statements in his deposition, nor was he authorized to sign TexPirg's answers to Applicant's first interrogatories.

Now, Mr. Doherty has filed (1) a document with the Board dated June 18, 1979, entitled "John F. Doherty's Memorandum to the Board Re: Discovery Matters" wherein

Mr. Doherty states that he terminated employment with TexPirg on June 1, 1979, and that ". . . no person appears to be directing TexPirg's intervention at this moment. . . ." and (2) a document dated June 26, 1979, entitled "John F. Doherty's Second Memorandum to the Board Re: Discovery Matters" wherein he states that TexPirg has lost its funding with the University of Houston and such deprivation of funds ". . . is likely to slow down the proceeding. . . ." ^{*/}

In our motion to compel further answers filed on June 21, 1979, we requested the Board to order TexPirg to re-submit its previous answers to interrogatories, as well as to furnish supplemental answers, under oath or affirmation "by the person with knowledge of the information contained in each of the answers to said interrogatories and who has been authorized by TexPirg to submit such answers" (p. 7). For purposes of that motion, we believed that the requested relief would solve the problems created by TexPirg with respect to discovery. However, in light of Mr. Doherty's June 18 and June 26 submittals it is uncertain who speaks for TexPirg, or indeed, whether TexPirg is still an intervening party. Therefore, in addition to the request for

^{*/} The instant motion does not condone and is not related to the scandalous and baseless accusations made by Mr. Doherty in these two documents, nor should this motion be read as implying that the documents constitute acceptable pleadings. Applicant reserves the right to take whatever further action is deemed appropriate with respect to the documents.

relief in our June 21 motion, we urge the Board to obtain from TexPirg -- as opposed to its counsel -- information as to whether it intends to continue as a party in this proceeding, and if so, to identify a spokesman from the TexPirg organization for purposes of this proceeding. Such an inquiry bears on the question of the continued status of TexPirg as a party intervenor in this proceeding. We realize that such a request is unusual since TexPirg is represented by an attorney in these proceedings. However, because of the conflicting pleadings summarized above, as to who is authorized to speak for TexPirg, and how its participation is being directed, such action by the Board is clearly warranted.

Based upon the filings of Messrs. Doherty and Scott, there may be no officer of TexPirg directing the organization's intervention in this proceeding. While Mr. Scott is the attorney of record for TexPirg, he is not the intervening party. It is quite possible, because circumstances have so changed with respect to TexPirg, that Mr. Scott is simply representing the individuals identified in TexPirg's petition for leave to intervene. If that is the case, TexPirg should be dismissed from this proceeding.

Applicant respectfully requests the Board to issue an order in the form attached hereto requiring TexPirg to state

through an authorized corporate spokesman whether it wishes to continue its participation in this proceeding, and if so, to identify an official representative or representatives of TexPirg accompanied by a statement showing that TexPirg has authorized that representative or representatives to speak for TexPirg. We urge prompt action by the Board because the current situation impairs the orderly discovery process which is essential to a well-prepared case.

Respectfully submitted,

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Attachment: Draft Order

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(DRAFT OF PROPOSED ORDER)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

ORDER

The Board is in receipt of the following documents
filed in this proceeding:

1. A letter of May 10, 1979, from Mr. John Doherty
advising that he was not an "officer" of intervenor TexPirg.
2. A "Memorandum to the Board re Discovery Matters"
filed by Mr. Doherty dated June 18, 1979, and advising that
he terminated employment with TexPirg on June 1, 1979, and
that ". . . no person appears to be handling TexPirg's inter-
vention at this moment"
3. A document dated June 26, 1979, entitled "John
Doherty's Second Memorandum to the Board re Discovery Matters"
wherein he states that TexPirg has lost its financial support
and as a consequence this " . . . is likely to slow down the
proceedings"
4. A Motion filed by Applicant on June 28, 1979, refer-
ring to TexPirg's answers to Applicant's interrogatories dated
June 6, 1979, and signed by TexPirg's counsel advising that

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notwithstanding Mr. Doherty's sworn statements to the contrary, Mr. Doherty was not authorized to furnish certain answers on behalf of TexPirg in a deposition taken on March 26, 1979.

These pleadings create a serious concern regarding TexPirg's intentions with respect to further participation in this proceeding and the identity of its authorized representative. This matter requires appropriate action by the Board to assure timely discovery and to avoid delay and maintain order in this proceeding.

WHEREFORE, it is ordered pursuant to 10 C.F.R. 2.718 that:

1. The Applicant's motion of June 28, 1979, is granted, and
2. TexPirg shall file with this Board not later than July , 1979, through an authorized corporate spokesman, a statement whether it wishes to continue participation as a full party in this proceeding, and if so, the identity of the official representative or representatives of TexPirg accompanied by a statement showing that the organization has authorized that representative or representatives to speak for TexPirg.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Sheldon J. Wolfe, Esquire
Chairman

Dated at Bethesda, Maryland
this day of , 1979.

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Station, Unit 1))	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicant's Motion for Further Procedures Relating to TexPirg Intervention with attached Draft Order were served on the following by deposit in the United States mail, postage prepaid, this 28th day of June, 1979:

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