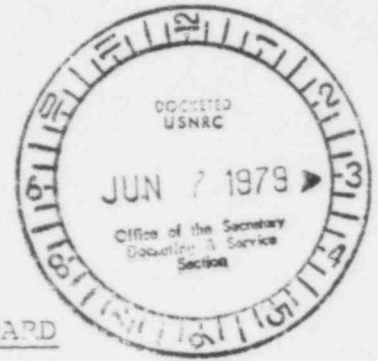


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



IN THE MATTER OF )  
 )  
HOUSTON LIGHTING AND )  
POWER COMPANY, ET AL. )  
 )  
(SOUTH TEXAS PROJECT )  
UNITS 1 AND 2) )

DOCKET NOS. 50-498  
50-499

APPLICANTS' RESPONSE TO SUPPLEMENT TO CITIZENS  
FOR EQUITABLE UTILITIES, INC. ORIGINAL PETITION

I. INTRODUCTION

Applicants file this response to documents filed on May 29, 1979, by Intervenor, Citizens for Equitable Utilities (CEU). The documents are styled: (1) "Supplement to Citizens for Equitable Utilities Original Petition; and (2) "Supplement to Citizens for Equitable Utilities Inc. Original Petition in Compliance with Board Order, April 3, 1979." The first document is a listing of CEU's amended contentions per the Board's "Prehearing Conference Order Ruling Upon Intervention Petitions" dated April 3, 1979 ("Order"). The second repeats those contentions but also includes a discussion of seven of the nine contentions. The focus of this response is on the second document (hereinafter referred to as the "CEU Supplement"), which

360 180  
7907130 486 G

lends itself best to joining issue on the acceptability of the contentions.

## II. BACKGROUND

The Board's Order of April 3, 1979 granted standing to CEU and noted further that two of its contentions (1 and 5) were acceptable, although not "written in a form suitable for contentions." It directed that those contentions "be rewritten to assert only the specific matters at issue" (Order, p. 53). As indicated below, it is Applicant's view that CEU has complied with the Board's mandate in its restatement of contention 5 and partially in the restatement of contention 1.

As for the remaining contentions, the Board determined that, in the absence of further information, they could not be accepted or rejected. The Board stated further that "[B]ecause we believe that certain of the matters may possibly warrant adjudication, we are affording CEU an additional opportunity to perfect certain aspects of its contentions, along the following lines." The Board then went on to furnish guidance in considerable detail as to the nature of the additional information required by CEU. Notwithstanding this guidance and an extended period within which to comply (originally 30 days and then extended an additional 26 days) the defects in the balance of the contentions have not been cured. As contemplated by the Board, the parties have met in Austin, Texas, on May 9, 1979 in an

effort to stipulate to an agreed set of contentions. While some grounds of agreement were found (particularly as reflected in the re-write of contentions 1 and 5 and the deletion of contention 4) the meeting was otherwise fruitless. CEU has not sought further discussions with Applicants in the intervening period of almost three weeks but has chosen to submit "the further information [the Board] called for in order to determine whether [its] contentions are acceptable." The following is a seriatim response to the CEU Supplement in the order discussed in that document.

### III. THE CONTENTIONS

#### Contention 1 -- "Hurricane Winds

The first sentence of contention 1, dealing with damage to Category 1 structures states an acceptable contention within the scope of contention 1 as originally written. The original focus of that contention was on a category 1 structure, the containment building:

. . . . [S]hould such a storm breach the containment of the STP. . . the range over which the contents of that containment would be so large as to be at this point undefinable, and endanger a far greater number of persons than previously contemplated. . .

Petition for Leave to Intervene by CEU, p. 15.

The addition of the second sentence introduces for the first time the failure of undefined non-category 1 structures which would "jeopardize the safe operation of STP." There is no identification of the structures in question nor how they would

affect plant safety as potential missiles or otherwise.\*/  
Finally, even assuming that these deficiencies could be remedied, they would constitute an impermissible expansion and amendment of contention 1. The Board has stated that CEU, as a late petitioner, "take[s] the proceeding as it finds it" and that it "cannot reserve any rights to submit new contentions. . . ." (Order, p. 64) To the extent contention 1 as rewritten goes beyond the scope of the original contention, it runs afoul of the Board's Order.

Contention 5 -- Compliance with Appendix I

As re-stated, the contention is acceptable.

Contentions 2 and 3 -- Effect of Radioactive Discharges on Aquatic Organisms

As combined, this contention deals with the impact on aquatic organisms of radioactive discharges to the cooling lake and Little Robbins Slough. The Board found as to original contention 2 that it failed to "describe the information (or its source) with sufficient particularity for us to determine how new or significant the information is." (Order, p. 57). Comparable difficulties were noted with respect to original contention 3.

---

\*/ Potential missiles are discussed extensively in section 3.5 of the FSAR and nothing alleged by CEU indicates the potential for missiles of greater significance to safety than those evaluated by Applicants.

Combined contention 2-3 is no more -- perhaps less -- specific than the original separate contentions. Although the discussion of the combined contention (in the CEU Supplement) refers to a number of studies concerning the biological reconcentration of radionuclides, CEU does not allege the relevance of these studies to the STP cooling reservoir or Little Robbins Slough.

In any event, the combined contention as re-drafted provides no further basis for a determination whether the contention is anything other than a challenge to Appendix I (as originally argued by Staff and Applicants). The Board, disagreeing with Applicant and Staff read the contention "as seeking to raise the question of the 'residual risks' of prescribed levels of emissions, as permitted by Maine Yankee. . ." (Order, p. 58). The Board directed CEU to "address whether our reading is accurate." Id. Intervenor has failed to do so and, accordingly, the contention must be dismissed.

#### Contention 6 -- Milk Pathway

The Board addressed the original contention as follows:

[The contention] seems to assert that contrary to the information supplied by the Applicants, there are cows closer to the plant. No specific information concerning the location of milk-producing cows is provided. If CEU should have information demonstrating that such cows are present within five miles of the facility, the contention would be a valid one. (Order, p. 59)

Neither re-phrased contention 6 nor its accompanying discussion provide the information required by the Board's order

to make the contention a valid one. Instead, CEU now equivocates on its prior assertion that it "felt, although there has not been sufficient time for a survey, that within. . . the 5-mile radius of the plant, that at this time there are certainly milk producing animals being raised." (Petition for Leave to Intervene by Citizens for Equitable Utilities, Inc., p. 19). CEU has now had over three months to locate a single milk producing animal; it has failed to do so, and now resorts to the barren prediction that such animals "will" be pastured within five miles of STP. Accordingly, this contention must be dismissed.

Contention 7 -- Adequacy of Cooling Water

The Board treated original contention 7 as presenting an issue "with respect to the availability of make-up water for the main cooling reservoir" (emphasis added) but called for "further particularization of the information or data relied on. . . ." (Order pp. 59-60)

As re-phrased, contention 7 provides no further particularization as to the availability of make-up water. Certain studies are cited in footnotes in both documents, but there is absolutely nothing alleged with respect to the relevance of these studies to STP and its intended source of make-up water.

Instead, the contention, especially as developed in the discussion, relates to the "probability that there are numerous pockets of sand such as quicksand" in the lake and that, as a consequence, cooling lake water will be lost more quickly than

it can be replaced. There is no stated basis for this novel assertion; it is not mentioned in the original petition. The contention appears to have shifted more rapidly than the sand. As re-phrased, contention 7 constitutes an impermissible amendment of the original contention without a stated basis.

Contention 8 -- Emergency Plans

The Board found that this contention as originally drawn related only to evacuation measures potentially necessary for persons located beyond the LPZ and, accordingly, distinguished it from the Fermi<sup>\*/</sup> situation where the affected persons resided within the LPZ. The information supplied in the CEU Supplement leaves the situation unchanged. Although a school is identified, it is more than 5 miles beyond the LPZ; the remaining discussion is even less specific than the original contention in terms of describing the location of individuals who might have to be evacuated. Accordingly, the contention continues to be defective.

The Board did note that under effective "interim guidance" Commission regulations "do permit emergency planning measures in certain circumstances outside the LPZ, 'but only where there is presented particular information why such a plan would be warranted'" (Order, p. 61). That information was found want-

---

<sup>\*/</sup> Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2) LBP-78-37, 8 NRC 575 (1978).

ing by the Board on its examination of the original petition no additional information contained in the CEU Supplement identifies "design features of the facility and. . . physical characteristics of the environs in the vicinity of the site" justifying the extension of evacuation measures beyond the LPZ. 43 Fed. Reg. 37475 (August 16, 1978).

Contention 9 -- Construction Deficiencies

CEU's original contention 9 was an unparticularized assertion regarding the falsification of quality assurance records and "errors of intent" in the construction of STP. The Board, noting the similarity between CEU's assertions and those of CCANP and the now-departed ACEE, accorded to CEU an opportunity to particularize the contention. CEU has responded by enumerating Inspection and Enforcement (I&E) reports describing deficiencies "which may or may not be correctable" and a single paragraph -- (J) -- encompassing nothing but the most cryptic references to four other alleged construction deficiencies.

As to the nine I&E reports, their authenticity, as well as the truth of the matter stated therein, even if stipulated among the parties, would present no litigable issue. Contention 9 as rewritten is merely a litany of problems identified and resolved on the public record. Their reiteration on the record of a public proceeding would serve no useful purpose unless the subject matter noted therein was found to have a basis and, nonetheless, remains uncorrected. No such assertion

is made by CEU and, without more, no matter germane to the regulatory criteria pursuant to which operating licenses are issued (10 CFR 50.37) is presented.

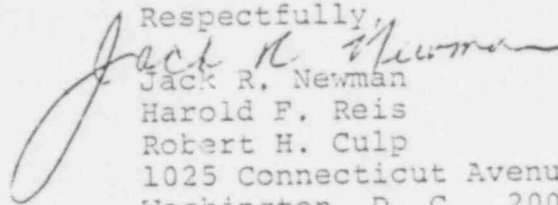
As to the four alleged construction deficiencies in paragraph (J), they are as noted above, at best, inchoate thoughts -- so cryptic as to fail on any application of the principle of "reasonable specificity." While vagueness of this type might be expected -- and perhaps tolerable -- in an initial pleading, it is manifestly insufficient, coming, as it does, after an extended opportunity to amend. The contention should be dismissed in its entirety.

#### IV. CONCLUSION

As noted above, this Board has been extremely forthcoming in dealing with CEU. Its late petition -- coming almost 6 months after the close of the period for filing petitions has been admitted by the Board on a liberal application of the factors specified in 10 CFR 2.714(a). It has been allowed almost two months to amend and, by its own account, has enjoyed the cooperation of Applicants and Staff in framing its contentions. Nevertheless, in all but a portion of contention 1 and contention 5, CEU's petition remains deficient. Applicants urge the Board to act now on the "open issues" as contemplated in its Order of April 3, 1979 (p. 65), and dismiss all but the

indicated portion of contention 1 and contention 5, thus allowing discovery to move ahead on these matters.

Respectfully,

Handwritten signature of Jack R. Newman in cursive script.

Jack R. Newman  
Harold F. Reis  
Robert H. Culp  
1025 Connecticut Avenue, N. W.  
Washington, D. C. 20036

OF COUNSEL:

LOWENSTEIN, NEWMAN  
REIS, AXELRAD & TOLL  
1025 Connecticut Avenue  
Washington, D. C. 20036

BAKER & BOTTS  
3000 One Shell Plaza  
Houston, Texas 77002

Melbert D. Schwarz  
Charles G. Thrash, Jr.  
3000 One Shell Plaza  
Houston, Texas 77002

Attorneys for Applicant  
HOUSTON LIGHTING & POWER COMPANY  
Project Manager of the South Texas  
Project, acting herein on behalf  
of itself and other Applicants,  
THE CITY OF SAN ANTONIO, TEXAS,  
acting by and through the City  
Public Service Board of the City  
of San Antonio, CENTRAL POWER  
AND LIGHT COMPANY and THE CITY OF  
AUSTIN, TEXAS

360 189

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
HOUSTON LIGHTING & POWER	)	Docket Nos. STN 50-498-OL
COMPANY, ET AL.	)	STN 50-499-OL
	)	
(South Texas Project,	)	
Units 1 and 2)	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicants' letter to the Board dated June 5, 1979, with "Applicants' Response to Supplement to Citizens for Equitable Utilities, Inc., Original Petition" and "Applicants' Response to Citizens Concerned About Nuclear Power Reformulated Contentions" attached thereto were served on the following by deposit in the United States mail, postage prepaid, or by hand delivery this 5th day of June, 1979:

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

Dr. James C. Lamb, III  
313 Woodhaven Road  
Chapel Hill, North Carolina 27514

Dr. Emmeth A. Luebke  
Atomic Safety and Licensing Board  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Henry J. McGurren, Esq.  
Hearing Attorney  
Office of the Executive Legal Director  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

360 190

2

Honorable Burt O'Connell  
County Judge, Matagorda County  
Matagorda County Court House  
Bay City, Texas 77414

Ms. Peggy Buchorn, Executive Director  
Citizens for Equitable Utilities  
Route 1, Box 432  
Brazoria, Texas 77422

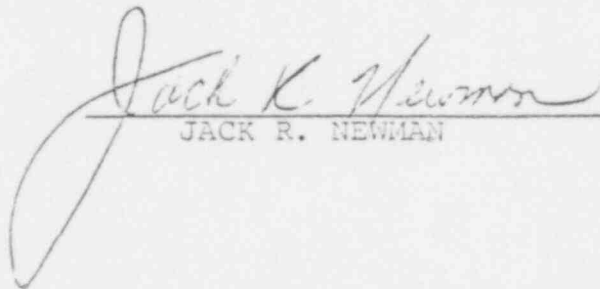
Mr. Lanny Alan Sinkin  
Citizens Concerned About Nuclear Power  
838 E. Magnolia  
San Antonio, Texas 78212

Steven A. Sinkin, Esq.  
116 Villita  
San Antonio, Texas 78205

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

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

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

  
JACK R. NEWMAN

Date: June 5, 1979

360 191