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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)	)	
	)	

APPLICANT'S RESPONSE TO PETITIONS
FOR LEAVE TO INTERVENE FILED BY
MICHAEL J. ANCARROW
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JANICE BLUE
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Houston Lighting & Power Company, ("Applicant or HLP"), has received fifteen identical petitions for leave to intervene from the following, all of whom obviously did little more than sign and date a form:[1/]

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1/ Each petition is a one-page document, the body of which states in identical language that it is a petition for leave to intervene and that the petitioner is entitled to intervene for the reasons set forth in the four following numbered paragraphs. This material is followed by spaces for dating and signature. Below those spaces is a parenthetical direction to "print the following," followed by spaces for the signatory's name, address, city, state and zip code.

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I.

On June 18, 1979, the Licensing Board issued a "Supplementary Notice of Intervention Procedures" (44 Fed. Reg. 35062, June 18, 1979; "Supplementary Notice") which described the background of this proceeding and, subject to an exception not here applicable, provided that petitions for leave to intervene in accordance with the requirements of 10 CFR §2.714 could be filed by July 18, 1979, by persons who did not file a petition for leave to intervene pursuant to the Board's notices of May 31 and September 11, 1978, "because of the restrictions on permissible contentions contained in those notices. . ." and who so stated in their petitions. The Supplementary Notice also briefly summarized what has to be contained in a petition to intervene in order to comply with 10 CFR §2.714.

In accordance with the Supplementary Notice, paragraph 4 of the prepared form recites that the person signing the

form failed to file a petition for leave to intervene "because of the restrictions on permissible contentions" contained in the earlier notices. The forms also state, with no detail, that the persons signing the forms reside within fifty miles of the plant site and that the base of their normal activities is within a fifty-mile radius of the site; that they have a "direct and personal interest and concern in the health and safety of myself and family, and in our use and enjoyment of the natural resources within a fifty-mile radius of the plant . . .;" and that they contend that those interests "will be injured by the construction and operation of the proposed plant and the increased radioactivity and physical harm to the environment caused by the construction of this plant if a construction permit is granted."

II.

For the reasons set forth below, Applicant submits that all of these petitions for leave to intervene should be denied. However, even if the Board should disagree with those reasons, HL&P submits that a preliminary question of fact must be addressed before the petitions may be granted. As the Supplementary Notice recites, notices concerning the availability of intervention were published on December 28, 1973, May 31, 1978, and September 11, 1978. Consequently, under ordinary circumstances, the instant petitions would

be nontimely and their granting would have to turn upon the results of the Board's balancing of the factors referred to in 10 CFR § 2.714(a)(1). The Supplementary Notice operated to waive consideration of those factors with respect to persons "who did not file a petition pursuant to the notices of May 31 and September 11, 1978, because of the restrictions on permissible contentions contained therein." The instant petitions make no reference to the factors referred to in 10 CFR § 2.714(a)(1); the right to intervene at this time rests solely upon their statements that their failure to file a petition to intervene earlier was "because of the restrictions on permissible contentions contained in those notices." However, if that statement is not correct, the petitions should be denied.

Applicant, of course, is not in a position to determine the accuracy of these statements.'' Neither, it is respectfully submitted, is the NRC Staff or the Licensing Board. Yet even if this Board should determine the petitions to intervene to be sufficient in other respects, petitioners would have no right to intervene at this time unless that statement is accurate. For this reason, Applicant believes that each of the petitioners who filed the form petition to intervene be required to appear before this Licensing Board and repeat the statement contained in the paragraph 4 of that form under oath in order to establish the accuracy of

that crucial statement. A convenient time and place for this to be done would be at the prehearing conference required to be held pursuant to 10 CFR § 2.751a, and Applicant is contemporaneously filing a motion to schedule such a prehearing conference.

Applicant is aware that the Board did not adopt a suggestion that petitions to intervene filed in response to the June 18, 1979, Supplementary Notice contain an affidavit to the effect that the petitioners had not earlier filed petitions to intervene because of the restrictions on admissible contentions contained in the May 31 and September 11, 1978, notices.[2/] However, the fact that fifteen identical petitions have been filed by different individuals on a form emphasizes the need to probe the accuracy of the statement contained in paragraph 4--a need that was not earlier apparent. This is not necessarily to suggest that petitioners are not entitled to use a form petition to intervene, or that laymen who wish to intervene in proceedings should be denied assistance. Nevertheless, the fact that a form is used suggests the possibility that a layman signing it may not have been fully instructed concerning the nature of the contentions he or she made and the need for

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2/ See Applicant's "Motion for Supplementary Notice of Intervention Procedures," May 9, 1979.

precision and accuracy. In short, circumstances have arisen which raise a question as to the accuracy of the identical statements contained in the petitions and which require that petitioners reaffirm the statements made in paragraph 4 in a manner which emphasizes the significance and meaning of those statements.

III.

Even if it should be determined that the statement contained in paragraph 4 of each petition is accurate, the petitions fail to meet the requirements of 10 CFR § 2.714(a)(2) and the Supplementary Notice. They do not "set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the result of the proceeding . . . ." This is so notwithstanding this Board's statements that "[a] distance of fifty miles between the city of residence and the plant site will not preclude a finding of standing based upon residence in that city . . ."; that it will not hold a pro se petitioner to the "standards of clarity and precision to which a lawyer might be reasonably expected to adhere . . ." in order to meet "the strict requirements of § 2.714(a)(2) . . ."; and "that a person whose base of normal, everyday activities is within such a radius of a facility as alleged . . . can fairly be presumed to have an interest which might be affected by reactor con-

struction and/or operation."[3/]

Neither the Board's holdings nor the authority upon which it relies suggests that a statement of "how that [the petitioner's] interest may be affected by the results of the proceeding . . ." can be as vague as are the instant petitions. The sole statement of such interest is contained in paragraph 3 of the form petitions which reads as follows:

> I contend these interests will be injured by the construction and operation of the proposed plant and the increased radioactivity and physical harm to the environment caused by the construction of this plant if a construction permit is granted.

It is not sufficient under any NRC adjudicatory holding merely to refer to "increased radioactivity and physical harm to the environment caused by the construction of this plant" without some reference to the nature of the "increased radioactivity and physical harm." For example, although a liberal policy concerning particularization was evidenced in Virginia Electric and Power Company (North Anna Nuclear Power Station Units 1 and 2) 9 NRC _____, ALAB 522 (January 26, 1979), it was in the context of a more specific allegation of injury than that set forth in paragrapn 3. The Appeal Board pointed out that the petition did in fact

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3/ Order Ruling Upon Intervention Petitions, February 9, 1979, p. 26. The form used in the instant petitions clearly attempts to track the Board's language.

"specify at least one type of harm which it believes its members might sustain as a result of expansion of the spent fuel pool's capacity." (Slip op., p. 3, n. 4) Petitioner had alleged "the spent fuel pool might bring about ground water contamination which, in turn, might affect a well located on her property." (Slip op., p. 3) This was considered enough with respect to individuals "living little more than a stone's throw from the facility." (Ibid) No similar specification is provided in the instant petitions.

Specification is particularly necessary for one whose residence is in Houston (as is the case with respect to all of the subject petitioners), a city about forty-five miles away from the plant site. Such residence is barely adequate to place a petitioner within the geographical zone of interest. In the words of this Board, it does no more than "not preclude a finding of standing . . . ." Board's Order Ruling on Intervention Petitions, February 9, 1979, p. 26. In such circumstances, at least some indication of the nature of the injury apprehended from "the increased radioactivity and physical harm to the environment" is necessary.

Finally, Applicant respectfully suggests that the liberal policy which this Board has followed with respect to pro se petitioners is not necessarily appropriate to

those who have merely executed a form. The assumption is that a pro se petitioner has not had the advantage of assistance from a lawyer. That assumption cannot be made where a form has been prepared by an individual or individuals unknown.

IV.

For the foregoing reasons, Applicant believes that the instant petitions for leave to intervene should be denied, and that, in any event, they should not be granted without requiring the petitioners to repeat the statement contained in paragraph 4 of the respective petitions under oath before this Board.

Respectfully submitted,

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UNITED STATES OF AMERICA
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CERTIFICATE OF SERVICE

I hereby certify that copies of the Applicant's Response To Petitions For Leave To Intervene Filed By Michael J. Ancarrow, Barbara Blatt, Janice Blue, Laura Brode, Stephanie M. Brown, James D. Chilcoat, Gabrielle Cosgriff, Barbara J. Ginn, Niami Hanson, Barbara Karkabi, Robert C. Kuehm, Dorothy J. Ryan, Glen Van Slyke, Rachel Weinreb-Kuehm, and Jeffrey R. West, dated July 30, 1979, in the above-captioned proceeding, were served on the following by deposit in the United States mail, postage prepaid, or by hand-delivery, this 30th day of July, 1979.

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