

NRC PUBLIC DOCUMENT ROOM



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANT'S RESPONSE TO  
PETITION FOR LEAVE TO  
INTERVENE BY EUGENE E. MUELLER

Applicant is in receipt of a petition for leave to intervene filed by Eugene E. Mueller, dated September 25, 1979. Mr. Mueller filed a letter dated July 10, 1979, the defects of which (if considered as a petition to intervene) were identified in Applicant's letter to the Board of July 30, 1979.

The instant petition, if intended to supplant the earlier defective "pleading", is untimely and Petitioner has failed to address any of the factors set forth in 10 CFR § 2.714(a) in order to justify his late filing. If viewed as a supplement to the earlier petition, it is similarly out of time since petitioners were required by the Board to file contentions by September 14, 1979. Finally, Petitioner has failed to establish that prior restrictions on admissible

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contentions dissuaded him from filing earlier. For these reasons alone the petition should be dismissed.

Petitioner appears to have two contentions. The first is that ACNGS is sited impermissibly close to the City of Houston and that the City cannot be evacuated. There is nothing in 10 CFR Part 100 which precludes, or even casts doubt on, the suitability of the ACNGS site in relation to Houston. Indeed, that issue was dealt with dispositively in the Partial Initial Decision (hereinafter "PID") (2 NRC 776, ¶ 81) where the Board determined, as part of a finding that ACNGS complies with 10 CFR 100, that "Since...Houston is sufficiently distant, no special considerations contemplated by [10 CFR 100] need be given to distance from that population center." This finding stands unchallenged by Petitioners so their contention raises no litigable issue. As to evacuation, current regulations do not require that protective measures (including evacuation) be taken beyond the LPZ. A recently proposed amendment to 10 CFR 50, Appendix E, would extent planning for evacuation beyond the LPZ "based on the design features of the facility and the physical characteristics of the environs in the vicinity of the site...." 43 Fed. Reg. 47978 (October 18, 1978). Petitioner has not identified any special characteristics of the facility or its environs to warrant evacuation beyond the LPZ pursuant to the proposed

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amendment. As a consequence of Three Mile Island, the Commission has under consideration modification of its rules on emergency planning<sup>\*/</sup> including possible implementation of the Joint NRC/EPA Task Force Report (NUREG-0396), but even that document does not contemplate evacuation beyond a 10-mile radius around a nuclear facility. The contention should be dismissed.

Petitioner also contends (apparently on the basis of some comparative analysis with another facility) that ACNGS will not comply with 10 CFR Part 50, Appendix I. This statement is totally lacking in basis. FSFES § S.5.4.4 concludes that ACNGS will comply with 10 CFR Part 20 and 10 CFR Part 50, Appendix I; Petitioner does not dispute this extensive analysis. The contention may be a challenge to the Commission's regulations, but the showing of "special circumstances" required by 10 CFR 2.758 is absent.

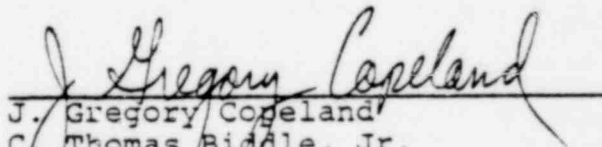
The petition fails on every ground and should be denied.

Respectfully submitted,

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<sup>\*/</sup> "Advanced Notice of Proposed Rulemaking on Adequacy and Acceptance of Emergency Planning Around Nuclear Facilities," 44 Fed. Reg. 41483, July 17, 1979.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicant's Response to Petition for Leave to Intervene by Eugene E. Mueller in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, or by hand-delivery this 11th day of October, 1979.

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