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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of §
§
HOUSTON LIGHTING & POWER COMPANY §
§
(Allens Creek Nuclear Generating §
Station, Unit 1) §
§

Docket No. 50-466

APPLICANT'S RESPONSE TO
JOHN F. DOHERTY'S ADDITIONAL CONTENTION #39

Applicant files this response to the motion of Intervenor John F. Doherty for admission into this proceeding of an untimely contention relating to fuel rod ballooning. For the reasons set out below, the motion should be denied.

First, Mr. Doherty has failed to comply with the Commission's regulations which require that the "bases" for a contention be set forth with "reasonable specificity." 10 C.F.R. § 2.714(b). Mr. Doherty cites as the basis for his assertion that fuel rod ballooning will cause core melting at ACNGS, the NRC Staff's report on long term cooling of the Three Mile Island Unit 2 (NUREG-0557). Reliance on that document is misplaced for the reasons which follow.

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NUREG-0557 is the Staff's tentative assessment of the TMI-2 core geometry based upon the data available as of April 13, 1979. The one single statement in the entire text that is relevant to Mr. Doherty's contention is the statement that "[t]he cladding for many or all fuel elements may have ballooned and ruptured early in the accident". (p. 2-1, emphasis added). However, this consequence of a loss-of-coolant accident has long been predicted and, in fact, is incorporated in the Commission's ECCS criteria. 10 C.F.R. 50, Appendix K, Section I.B "Swelling and Rupture of the Cladding and Fuel Rod Thermal Parameters." This one statement in NUREG-0557 does not in any way cast doubt on the adequacy of the consideration given to the possibility of fuel rod ballooning in the provisions of Appendix K. In order for Mr. Doherty's contention to be admissible, it would have to challenge Applicant's compliance with the Appendix K criteria with respect to fuel rod ballooning. It fails to do so and, accordingly, should be dismissed.

Secondly, even assuming that some amount of fuel rod ballooning did occur at the Three Mile Island facility, Mr. Doherty does not identify nor describe any similarities in core design or anticipated LOCA sequences shared by TMI-2

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and ACNGS. Thus, he fails to provide any basis for a contention that an occurrence at TMI-2 (a pressurized water reactor) would or could happen at ACNGS (a boiling water reactor).

Finally, Mr. Doherty's contention is untimely filed without an adequate showing of good cause as required by 10 C.F.R. § 2.714(a). Mr. Doherty admits that the phenomenon of fuel rod ballooning was discussed as early as January 1972 (see his Exhibit A) and therefore could have been raised during the period provided by the Board in its April 11, 1979, Memorandum and Order. Mr. Doherty's sole excuse for belatedly raising this issue is the May 1979, publication of NUREG-0557. However, as we have discussed above, NUREG-0557 provides no basis to support Mr. Doherty's contention and therefore cannot be relied upon as justification for failing to file the contention on a timely basis.

A petitioner has a heavy burden in justifying an untimely filing when he has failed to establish "good cause." Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant) CLI-74-4, 1 NRC 273 (1975). Mr. Doherty has not carried this burden with his brief discussion of the other factors set

forth in § 2.714(a). Accordingly, the Board should dismiss this contention as untimely filed.

Respectfully submitted,

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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