

November 21, 1979

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)	§	

REPLY TO TEX PIRG BRIEF
IN RESPONSE TO APPLICANT'S MOTION TO DISMISS

Applicant has received TexPirg's response to its November 9, 1979 Motion to Dismiss TexPirg. The response is an attempt to divert the Board from the essential fact that its Order of July 12, 1979, has been willfully disregarded in contempt of the Board's authority and to the severe prejudice of the Applicant.

The Motion to Dismiss describes the events leading to its filing and shall not be restated here. TexPirg's response is, very simply, that Applicant did not depose the right person. Thus, TexPirg argues that Applicant's attempt to depose Mr. Scott was "unprecedented" and improper and that:

"If Applicant were truly interested in obtaining the most information, they should have sought Mr. Johnson's deposition." 1/

1/ TexPirg Response, pp. 10-11.

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This statement stands in stark contrast to the fact that Mr. Scott signed the affidavit attached to those answers, and swore in the affidavit that he answered the interrogatories.^{2/} Applicant did, in fact, attempt to depose Mr. Johnson but he failed to appear on the date shown in the subpoena issued by this Board. Neither Mr. Johnson nor his attorney ever sought to explain this failure to appear nor did TexPirg move to quash the subpoena.^{3/}

II.

The situation facing the Applicant and, indeed, the challenge to the authority of this Board can be summarized as follows:

1. Mr. Doherty answered interrogatories as an officer of TexPirg and was subsequently deposed. TexPirg then disavowed Mr. Doherty's authority to answer questions on deposition about his answers to interrogatories. For this reason, the Board ordered TexPirg to resubmit their answers to interrogatories.

^{2/} See Applicant's Motion to Dismiss TexPirg, November 9, 1979, Exhibit A, p. 23.

^{3/} As discussed below, the attempt to depose Mr. Johnson would, in any event, have come to naught.

2. Mr. Scott "resubmitted"^{4/} the answers in response to the Board's July 12 Order by signing an affidavit attached to those answers and swore that he answered the interrogatories, but when asked a question about the answers to TexPirg's First Interrogatories he said he could not answer the question because John Doherty had answered the interrogatories. He also refused to answer questions on grounds of attorney-client privilege.

3. Mr. Scott now argues that Applicant should have directed its questions to Mr. Johnson because he had answered the interrogatory "in its most complete and detailed form...in TexPirg's Supplemental Response..."^{5/} As the Board knows, Mr. Scott swore he resubmitted TexPirg's answers in response to the July 12 Order. In fact, Mr. Johnson could not possibly be the individual to whom Applicant must turn for further information concerning these interrogatories because as TexPirg admits:

4/ TexPirg's Response (fn. on p. 7) shows that Applicant was correct in asserting that TexPirg did not resubmit the answers as required by the July 12 Order. Mr. Scott simply attached an affidavit to the answers prepared by Mr. Doherty.

5/ The only interrogatories Mr. Johnson answered were Applicant's Third Interrogatories, which are in no way related to the July 12 Order. As noted in Applicant's motion, Mr. Scott admitted Mr. Sansom had answered the interrogatories and that Mr. Scott had made a futile attempt to get an affidavit from Mr. Sansom. Contrary to TexPirg's reply on this point, Applicant specifically requested Mr. Scott to get an affidavit from Mr. Sansom in order to avoid the exact problem which has developed.

"Mr. Johnson was not in TexPIRG at the time those responses had been originally submitted, and therefore, technically, would have violated the Board's order that the affidavit [sic] contain the name of an individual with knowledge of the responses...." 6/

In sum, Mr. Scott will not answer questions about the contentions because of an assertion of privilege (and he admits that he could not answer them as true anyway), he asserts Applicant should have deposed Mr. Johnson instead of him because Mr. Johnson provided the responses to the July 12 Order (even though Mr. Scott swore he had), but he has admitted that Mr. Johnson could not have answered questions about TexPirg's "resubmitted" answers.

III.

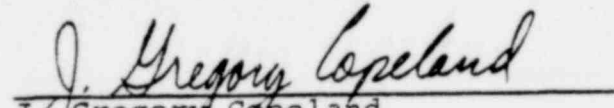
The result of the foregoing situation is that there is no one whom the Applicant can depose, thus frustrating its right of full discovery. The purpose of the July 12 Order was to identify an individual with knowledge of the facts set forth in TexPirg's answers to interrogatories. Had TexPirg chosen to comply with the July 12 Order in good faith, the Applicant could have proceeded with discovery in

6/ TexPirg Response, p. 8.

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the manner contemplated by the NRC's regulations. TexPirg chose to frustrate the purpose of the July 12 Order and it is TexPirg, not Applicant, which should suffer the consequences of TexPirg's chosen course of conduct.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing
Reply to TexPirg Brief in Response to Applicant's Motion
to Dismiss in the above-captioned proceeding were served on
the following by deposit in the United States mail, postage
prepaid, or by hand-delivery this 21st day of November,
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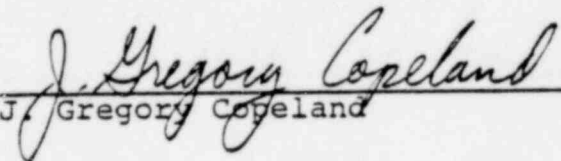
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