

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

APPLICANT'S RESPONSE TO TEX PIRG'S  
AMENDMENTS TO CONTENTIONS DATED MAY 12, 1979

AA#1: This contention alleges that the PID and the FS-FES did not consider the alternative of new natural gas fueled generating facilities. As before, the contention suffers from a fatal defect -- Applicant is prevented by law from building new natural gas fueled generating facilities. See, Powerplant and Industrial Fuel Use Act, 18 U.S.C. 8301 et seq., Section 201. TexPirg tries to circumvent the force of the Fuel Use Act by arguing that: (1) Congress may modify or appeal the Fuel Use Act because of an alleged "glut" of natural gas, or (2) the granting of an air quality

exemption under the Act is "plausible". The speculation underlying the first argument is so obvious, no further discussion is required. (See February 9 Order ruling on intervention petitions, p. 70, wherein the Board dismissed as speculative a contention by another petitioner which was based upon conjecture as to future legislative action). The question of an exemption is no less speculative. In the first place, the Department of Energy has not even promulgated final regulations covering exemptions under the Act. Once the final regulations are promulgated there would have to be a determination made as to whether Houston Lighting & Power Company could apply for an exemption under the regulations and finally a determination would have to be made by the Department of Energy as to whether Applicant qualified for an exemption. This determination, in turn, requires certain determinations by the Environmental Protection Agency. In short, TexPirg must stack assumption upon assumption to even reach the argument that an exemption is "plausible." This type of speculation does not give rise to a litigable contention. See, Exxon Nuclear Co., Inc. (Nuclear Fuel Recovery and Recycling Center), LBP-77-59, 6 NRC 518, 519-20 (1977).

Aside from the foregoing deficiencies, the fact remains, as noted by the Staff at page 5 of its "Response to Additional Contentions of TexPirg" (June 5, 1979), that the

1228 331

contention is based on relatively recent events. Therefore, the contention could have been raised in response to the Board's Order of September 1, 1978. Accordingly, it is barred by the limitation on "new contentions" in the Board's Order of April 12, 1979.

AA#2: TexPirg argues that HL&P can reduce its reserves by interconnecting with utilities that have excess capacity as a result of some unidentified "national, system-wide conservation" program. TexPirg does not identify the utilities which have the alleged excess of generation nor does it identify how much it would cost to interconnect with those utilities to obtain access to their alleged excess reserves. Furthermore, TexPirg fails to identify any studies by Congress showing a decrease for new generating facilities on a nationwide basis. The contention remains hopelessly vague and subject to the same infirmities ("remote and speculative") identified by the Staff in "Response to Additional Contentions of TexPirg" (June 5, 1979, pp. 8-9).

AA#3: The contention asserts that Applicant is not technically qualified to construct ACNGS because (1) it has not previously "designed an operating nuclear power plant"; and (2) it has encountered certain construction difficulties at the South Texas Project (STP). As to item (1) it is not, and has never been a requirement of NRC regulations that an Applicant have previous experience in

1228 332

the construction and/or operation of a nuclear power plant. Order Ruling Upon Intervention Petitions, p. 44 (February 9, 1979). As to item (2), putting aside the question of whether the alleged deficiencies at the STP site are unusual in day-to-day power plant construction, intervenor has not established the relevance of those deficiencies to ACNGS. Allens Creek is a different reactor design from a different vendor, a project of much smaller scope, and is not being engineered or constructed by the same contractor. In short, as the Staff noted in its "Response to Additional Contentions of TexPirg" (June 5, 1979, p. 26), intervenor has not established the necessary "nexus" between the STP and ACNGS projects essential for the admission of this contention.

AA#4: Referring to experience with rising costs at other unidentified nuclear power projects as well as STP, intervenor contends that Applicant will not be able to finance ACNGS. There is absolutely no way of determining whether the cited "study by Bupp" of unidentified nuclear power projects has any relevance to ACNGS. As to STP, it need only be restated that STP is a different project of greater magnitude, involving a different architect-engineer contractor. Any attempt to relate the cost overrun experience at STP to ACNGS must be based on pure speculation. The amended contention is, if anything, of lesser substance

than the contention as originally stated and which the Staff urged "be rejected as a matter in controversy since it presents no allegation with a stated basis which either the Staff or the Applicant could intelligently address."<sup>\*/</sup>

AA#5: TexPirg contends that a cooling lake vertical temperature profile has not been considered in the assessment of heat loading impacts on the aquatic ecosystem. This amendment is essentially no different from the original contention filed on May 16, 1979. As we stated in response to that pleading, the NRC Staff did in fact request information from the Applicant on this subject. Applicant fully explained in the ER Supplement the basis for predicting that the cooling reservoir will be uniform in temperature throughout the vertical plane (p. SH-129). Intervenor fails to state in what way this analysis is deficient. In any case, in its February 9 "Order Ruling Upon Intervention Petitions" in response to TexPirg Contention 2 dealing with the same subject, i.e., effects of temperature on survival of fish, this Board expressly stated that (pp. 4-5) it had discussed the effects of temperature on fish in its Partial Initial Decision (2 NRC 776 in findings 39, 40 and 41) and that "in

---

<sup>\*/</sup> NRC Staff Response to Additional Contentions of TexPirg (June 5, 1979), pp. 27-28.

our judgment the change in temperature regimes described in the new design is insufficient to disturb these findings."

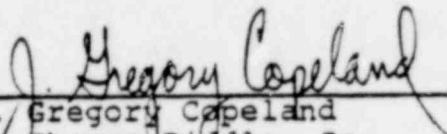
AA#6: As in previous submittals, TexPirg asserts that Wallis, Texas (a city of 1000 people) should be the "population center" (presumably for purposes of 10 CFR 100 calculations) rather than Rosenberg, Texas. In the Partial Initial Decision in this matter, the Board found that Rosenberg was the appropriate "population center" (2 NRC at 798) and intervenor offers no concrete reason why this finding should be disturbed. Intervenor's reference to the possibility of a new airport near the site and the bald assertion that such a facility, if built, would attract new residents to Wallis, is remote and speculative. No basis is furnished for reconsidering the findings (par. 81) of the Partial Initial Decision. Further, the NRC Staff has re-evaluated and reaffirmed the designation of Rosenberg as the nearest population center (SER Supplement No. 2, March, 1978, pp. 2-2, 2-4). The speculation upon which the contention is premised serves no basis as a challenge to the Staff's analysis.

For the foregoing reasons, Applicant urges that the Board dismiss the foregoing amended contentions.

1228 335



Respectfully submitted,

  
J. Gregory Copeland  
C. Thomas Biddle, Jr.  
Charles G. Thrash, Jr.  
3000 One Shell Plaza  
Houston, Texas 77002

OF COUNSEL:

BAKER & BOTTS  
3000 One Shell Plaza  
Houston, Texas 77002

LOWENSTEIN, NEWMAN, REIS,  
AXELRAD & TOLL  
1025 Connecticut Ave., N.W.  
Washington, D. C. 20036

Jack R. Newman  
Robert H. Culp  
1025 Connecticut Ave., N.W.  
Washington, D. C. 20036

ATTORNEYS FOR APPLICANT  
HOUSTON LIGHTING & POWER COMPANY

1278 336

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)	\$	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicant's Response to TexPirg's Amendments to Contentions Dated May 12, 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 28th day of September, 1979.

Sheldon J. Wolfe, Esq., Chairman  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D. C. 20555

Dr. E. Leonard Cheatum  
Route 3, Box 350A  
Watkinsville, Georgia 30677

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

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

R. Gordon Gooch, Esq.  
Baker & Botts  
1701 Pennsylvania Avenue, N. W.  
Washington, D. C. 20006

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

Hon. Charles J. Dusek  
Mayor, City of Wallis  
P. O. Box 312  
Wallis, Texas 77485

Hon. Leroy H. Grebe  
County Judge, Austin County  
P. O. Box 99  
Bellville, Texas 77418

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

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



Steve Sohinki, Esq.  
Staff Counsel  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

John F. Doherty  
4438 1/2 Leeland  
Houston, Texas 77023

Madeline Bass Framson  
4822 Waynesboro Drive  
Houston, Texas 77035

Robert S. Framson  
4822 Waynesboro Drive  
Houston, Texas 77035

Carro Hinderstein  
8739 Link Terrace  
Houston, Texas 77025

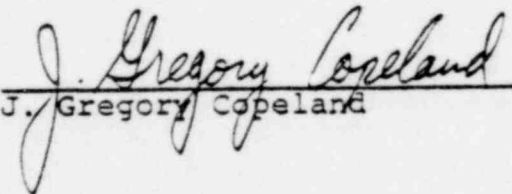
D. Marrack  
420 Mulberry Lane  
Bellaire, Texas 77401

Brenda McCorkle  
6140 Darnell  
Houston, Texas 77074

F. H. Potthoff, III  
7200 Shady Villa, #110  
Houston, Texas 77055

Wayne E. Rentfro  
P. O. Box 1335  
Rosenberg, Texas 77471

James M. Scott, Jr.  
8302 Albacore  
Houston, Texas 77074

  
J. Gregory Copeland

1228 338