



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

APPLICANT'S RESPONSES TO CONTENTIONS OF
PETITIONERS BAKER, BISHOP, CARRICK, CONN,
CUMINGS, DOGGETT, GRIFFITH, JOHNSTON,
LEMMER, OTTO, PAVLOVIC, PEREZ, SCHUESSLER,
STREILEIN, VAN SLYKE, WARNER, WEAVER AND WILSON

OF COUNSEL:

BAKER & BOTTS
3000 One Shell Plaza
Houston, Texas 77002

LOWENSTEIN, NEWMAN, REIS,
AKELRAD & TOLL
1025 Connecticut Avenue, N. W.
Washington, D. C. 20036

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

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

ATTORNEYS FOR APPLICANT
HOUSTON LIGHTING & POWER COMPANY

October 5, 1979

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UNITED STATES OF AMERICA
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Applicant files this response to the subject pleadings. Petitioners' contentions are dealt with seriatum, and attached to this Response is an Index to Petitioners and Contentions (Appendix B) showing where each contention is addressed.

Before addressing the contentions, however, there are two preliminary matters:

First, although none of the contentions addressed below is properly admissible, Applicant will not oppose certain contentions because they substantially repeat others previously admitted to this proceeding. Thus, if the sponsors of these contentions are otherwise found to have standing, Applicant would not oppose their participation, provided

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each is consolidated with the previously admitted party asserting essentially the same admitted contention. These Petitioners and Contentions are listed in Appendix A.

Second, we note that two Petitioners have advised that they intend to file additional contentions at some time up to fifteen (15) days before the prehearing conference in this matter. This Board, pursuant to its authority under 10 CFR 2.711(a) has established September 14, 1979, as the final date for submitting contentions as a matter of right. The Board has been generous in providing notice to Petitioners, allowing more than five (5) weeks to file additional contentions. Any further filing by Petitioners would be non-timely and, if filed without good cause shown, should be rejected out of hand.

Bryan L. Baker

BAKER CONTENTION 1:

Petitioner contends with respect to Applicant's financial qualifications that (1) the Board should "require that Applicant obtain secure funding from a private source to be repaid when the electricity is available for ACNGS," and (2) that the Applicant should be required to make a showing that there is "a clear commitment" by the Texas PUC and various local governments to provide Applicant with all the funds it may need to construct ACNGS.

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This contention must be rejected since it is nothing ~~more~~ than a series of conclusory statements based on the fact that Applicant, like any other public utility, must seek rate increase approval before the cognizant state authority. In this regard, Petitioner admits that his prognostications are "somewhat speculative." Moreover, the remedy Petitioner suggests (i.e. to have in hand "secure funding") is not required by NRC regulations. These regulations do not require that Applicant obtain funding from any particular source, and certainly not "secure funding" from a private source, as alleged by Petitioner. The assertion that "a clear commitment" of the Texas FUC and other government entities must be provided is wrong. Under the NRC's regulations, an applicant does not have to establish to a certainty that such rate relief will be granted before being considered financially qualified. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2) CLI-78-1, 7 NRC 1, 18-20 (1978); affirmed, Seacoast Anti-Pollution League v. NRC 598 F.2d 1221 (1st Cir. 1979). Accordingly, Petitioner's contention, which is that the construction permit should be denied unless both of these goals are met, is without any basis as required by §2.714 and must therefore be denied.

BAKER CONTENTION 2:

Petitioner claims that the use of the 80% capacity factor in the Final Supplement to the Final Environmental

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Statement (FSFES) is inappropriate and seeks to have Applicant re-submit all data which has been based upon the use of the 80% capacity factor. This contention should be rejected.

First, Petitioner has failed to identify in what respects the evaluation which relies upon the 80% capacity factor should be supplemented. For example, Petitioner states that the 80% capacity factor should be re-evaluated in terms of alternative sources, but fails to identify any specific alternative which would change with the use of a different capacity factor.

Moreover, pages SH-107 and SH-116 of the Supplement to the Environmental Report, and FSFES sections S.D.1.4.1 and S.D.1.4.2 (particularly Tables S.D.10, .11, .12, .13 & .14) clearly demonstrate that the comparative analysis covers a range of capacity factors reaching as low as 50%. Hence, Petitioner's suggested realistic figure of 50.4% has in fact been used: the results support the Staff's conclusion that "nuclear-generation costs are less than those of coal-fired plants, ranging from 5% less at a 50% capacity factor to more than 20% less at a 80% capacity factor." FSFES p. S.D.10. Since Petitioner's premise as to the use of a single assumed capacity factor is in error, his contention should be dismissed.

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Moreover, Petitioner appears to be referring to economic costs, rather than environmental costs, and the Board has previously ruled that comparative economic costs of Allens Creek with alternative energy sources in the absence of assertions regarding environmental superiority is not an issue in this proceeding. "Order Ruling On Intervention Petitions", February 9, 1979, at 9 (hereinafter, "Feb. 9 Order"). Accord, Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162-63 (1978). Petitioner has alleged no environmental superiority of any other alternative. Therefore, Petitioner's contention must be rejected.

J. Morgan and Margaret Bishop

BISHOP CONTENTION 1:

The contention alleges, without any supporting basis, that the population within 50 miles of ACNGS - and, particularly the Houston area - has been underestimated and that the facility "should not be sited so close to Houston which is the major population center in the south USA and the nation's fastest growing city." Intensive demographic studies of populations within 50 miles of the ACNGS have been made by the NRC Staff and Applicant, and Petitioners furnish no basis for challenging these studies. Moreover, the general matter sought to be raised by Petitioners was dealt with dispositively in the Partial Initial Decision

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(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.

BISHOP CONTENTION 2:

Contention 2 addresses the possibility of demographic changes within 2-3 miles of the site and the possibility of a Disneyworld-like development within 10 miles of the site. As to the first part of the assertion, the NRC Staff's Safety Evaluation Report has considered this possibility of increases in population in the area within 2-3 miles of the plant (an area within the designated Low Population Zone) and concluded that the LPZ conforms to the requirements of 10 CFR 100. ACNGS Staff Safety Evaluation Report (SER), Supplement No. 2, pp. 2-2 to 2-4.

As to the second part of the contention, the prospect of a Disneyworld-like development within 10 miles of ACNGS is totally speculative and without any basis in fact.

In summary, nothing in the contention warrants re-examination of the demographic conclusions in the PID (¶¶81-82) and the contention should be dismissed.

BISHOP CONTENTION 3:

Petitioners assert that because the population within 50 miles of ACNGS is allegedly greater than the comparable populations within 50 miles of other nuclear plants, the plant should be re-sited. The NRC Staff has found the population in the area around ACNGS to be acceptable and that the site compared favorably with an assumed "moderately populated region of 500 people per square mile." SER, November 1974, pp. 2-4 to 2-6. That analysis was updated in March 1979 to reflect, inter alia, "population growth in Ft. Bend and Harris Counties" and again it was determined that the population was substantially less than 500 people per square mile. SER, March 1979, pp. 2-2 to 2-4. Petitioners furnish no basis upon which to attack either of these conclusions. Finally, by failing to challenge the findings on this subject in the PID (1181-82), the contention raises no litigable issue and should be dismissed.

BISHOP CONTENTIONS 4 AND 5:

These contentions deal with the relocation of a 24 inch natural gas pipeline, asserting that the relocation will increase the hazard to nearby populations. The NRC regulates construction of nuclear plants, not pipeline relocations. The relocation of this pipeline must be in accordance with the Cox Act, Tex.Rev.Civ.Stat.Ann.Arts.

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6050-6066, which incorporates all the safety standards of the Natural Gas Pipeline Safety Act, 49 U.S.C. 1671 et seq. and the federal regulations issued thereunder. It is these statutes and regulations, not the Atomic Energy Act, which control pipeline construction, alteration and maintenance, including specifications on placement, clearances and proximity to structures, rivers, streams, and harbors.

BISHOP CONTENTION 6:

Petitioners contend that Applicant's assumption regarding yield, point of ignition, and volume of gas used in analyzing a hypothetical break in the LPG pipeline are conjectural. Petitioners, however, have failed to provide any specific criticism of Applicant's analysis. Further, Petitioners have not challenged the NRC Staff conclusion that if this conservative analysis does not provide adequate assurance that a lack of no danger exists to the plant from a propane explosion, physical measures can be implemented prior to operation to solve this concern:

"The applicant has committed that no later than the submittal of the application for an operating license, it will provide for staff review and approval, physical measures to cope with the potential hazard. Specifically, the applicant has committed to relocation of the pipeline if it cannot demonstrate by analysis or other alternate physical measures, acceptable resolution of this matter. We find this commitment acceptable and can recommend granting of a construction permit prior to ultimate resolution of this issue because construction of the plant can proceed independent of and not foreclose

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practicable resolution of this matter." (ACNGS SER Supplement 2, page 2-9)

In this regard, the NRC's regulations contemplate the deferral of certain issue to the operating license stage. See, 10 CFR §50.35(a), Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-232, 8 AEC 635 (1974). In the absence of any justification for the premature litigation of this issue, the contention should be dismissed.

BISHOP CONTENTIONS 7, 8 AND 9:

In all of these contentions, Petitioners assert without any underlying factual support, that Applicant has misanalyzed the effects on the plant from a nearby ruptured natural gas line. This issue was specifically brought before the ASLB in the earlier proceedings in this matter, (see testimony of Gammill et al., p. 6, fol. Tr. 303), and the Board found that "these pipelines will pose no safety hazard to the plant" (PID 185). That analysis was updated in Supplement No. 2 to the Staff's Safety Evaluation Report and the Staff concluded that "the line does not pose a hazard to the safe operation of the plant." (p. 2-7) Petitioners assert no contrary facts warranting further re-examination of this issue.

BISHOP CONTENTION 10:

Petitioners contend that the plant should be sited elsewhere owing to the possibility that pipelines "carrying

a variety of potentially dangerous solutions across the Brazos" might break, releasing "large amounts of flammable and/or corrosive materials downstream. . . ." Petitioner does not identify the pipeline in question or the dangerous substance which is of concern. The contention is speculative and totally lacking in any basis. This Board did examine the possibility of inadvertent oil and chemical releases upstream of the plant and concluded "that the effect of an industrial accident or an inadvertent chemical release need not be considered in the design of the plant." (PID 187). Petitioners suggest nothing of substance to warrant re litigation of this matter.

BISHOP CONTENTION 11:

Petitioners contend that cooling water from the Brazos may not be available owing to an alteration in the course of the Brazos River as a result of a change in the floodplain. The contention is not supported by any underlying basis and is wholly speculative. Accordingly, it fails to meet the specificity requirements of the 10 CFR 2.714. Even if the assertion is correct, it is, obviously, completely unrelated to any safety consideration since continuous river flow is not required for safe shutdown of the facility.

BISHOP CONTENTION 12:

This "contention" is a wholly unsubstantiated charge that radioactivity will seep from the cooling lake

into drinking water supplies. The NRC Staff has explicitly examined discharges into drinking water supplies and concluded as follows:

"Consumption of water represents a potentially significant exposure pathway to the population. However, there are no drinking water supplies within 58 miles of the plant that could be affected by the plant liquid effluents. Even though the cooling lake water is not to be used as a water supply, individual doses via this pathway are evaluated at the 40-year cooling lake equilibrium concentrations using standard dose models and an assumed daily consumption of 1.2 liters. Dilution was calculated using the models discussed in Ref. 20. The potential dose from any other water supply would be less than that of cooling water as additional dilution would occur. In addition, under normal operating conditions no potential exists for groundwater contamination."

FES, p. 5-15. Petitioners offer no basis for an assertion that this potential pathway for the ingestion of radioactive materials has not been considered adequately. Furthermore, Applicant is not required by statute or regulation to prove that "no radioactive material will ever reach any area resident." Petitioners offer no facts suggesting that Applicant will fail to meet the NRC's regulations. The contention should be dismissed.

BISHOP CONTENTION 13:

Petitioners state that Contention 13 "will be submitted later." For reasons set forth in the initial part of this response, Petitioners are foreclosed from furnishing a late contention as a matter of right.

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BISHOP CONTENTION 14:

This is a wholly unparticularized contention that the choice of generating alternatives (coal v. nuclear) is based on "inaccurate data." The coal alternative is exhaustively examined in FSFES §9.1.2.3 and Appendix S.D. Petitioners do not identify in what respect this data is "inaccurate." The contention must be dismissed for lack of specificity.

BISHOP CONTENTION 15:

Contention 15 asserts, without any supporting basis, that Applicant's analyses of the existence and effect of geologic faulting is insufficient. This matter was fully reviewed at the earlier proceedings in this matter, the ASLB concluding:

"The Staff has confirmed Applicant's determination that [faults underlying the ACNGS] are non-tectonic in nature and pose no threat of surface displacement."

* * *

"On the basis of Applicant's and the Staff's investigations (which included mappings, ground reconnaissance, trenching, logging and supplemental seismic reflection profiling) it is established that the linears crossing the site are not related to subsurface faults or other geological anomalies nor to topographical features which imply a hazard of ground failure at the site or otherwise affects its suitability. (Testimony of Gammill, et al., p. 22 [fol. Tr. 303]) The Board so finds."

Partial Initial Decision, 2 NRC 786, 804-806. The contention suggests nothing to warrant re-litigation of this matter.

BISHOP CONTENTION 16:

This contention asserts that Applicant has not considered in its flooding studies a Probable Maximum Flood combined with a Probable Maximum Hurricane. The assertion is patently in error. As the Board noted in the Partial Initial Decision:

"The potential for flooding of the site from several sources has been investigated by the Applicant and independently by the Staff. The potential sources include the Brazos River, Allens Creek, inadequate land drainage, and the reservoir itself. The Applicant has concluded that Brazos River flooding, using Probable Maximum Flood (PMF) and Probable Maximum Hurricane (PMH) criteria for evaluation, would result in a still-water elevation 1.7 feet below plant grade. The Staff has reviewed this subject and has concluded that flood conditions at the site can be acceptably taken into account in the design of the facility in a manner that assures the integrity of all safety-related structures, systems and components. . . . The Board concurs." (emphasis added)

PID, 2 NRC 786, 800-801. The contention is based on an erroneous premise and should be dismissed.

BISHOP CONTENTION 17:

Contention 17 states, again without any underlying assertion of fact, that the effects of railway accidents involving hazardous materials (e.g., TNT, chlorine) have not received adequate consideration. This matter has received exhaustive consideration by the NRC Staff (SER, November

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1974, pp. 2-8, 2-9);^{*}/ was the subject of evidence at the earlier hearings in this matter (Report of the NRC Staff on the Suitability of the Allens Creek Site, p. 5, fol. Tr. 303); and the positive conclusion of the ASLB on the issue is reflected in its Partial Initial Decision (2 NRC 796, 799). Petitioners' vague contention furnishes no basis for re-litigating this question.

BISHOP CONTENTION 18:

Contention 18 states that ACNGS should be moved to another location or be re-designed to accommodate an airplane accident. The Board determined that ACNGS need "not be designed nor operated with special provision to protect the facility against the effects of an aircraft crash." PID 186. Petitioners would seek to re-litigate the issue solely on the basis of an assertion that "there is a high likelihood (sic) of a commercial airport being built in the near

^{*}/ "The nearest transportation facilities are State Highway 36 and the Gulf, Colorado and Santa Fe Railroad, both running parallel to one another and located about 4700 feet west of the proposed plant. Postulating explosions of probable maximum cargo of high explosives carried by either a truck or a railroad boxcar, located at their closest points of approach, we find that the resulting peak overpressures are much lower than those produced by the design basis tornado. We conclude, therefore, that these potential hazard sources need not be considered in the design of the proposed facility."

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future in close proximity to the plant." Petitioners offer no support for the assertion that any airport will be so constructed "in the near future." Such speculation does not serve as a legal basis for re-litigation of a closed issue. The contention should be dismissed.

BISHOP CONTENTION 19:

Contention 19 is a bald assertion that fogging from the cooling lake will be a hazard to highway and rail traffic and that Applicant's "calculations of fogging conditions" are "not correct. . . ."

The subject matter of this contention has received close scrutiny by the NRC Staff. The Final Environmental Statement states:

"The total impact of the presence of the cooling lake as regards average temperature, relative humidity, and frequency of fogs is expected to be minimal. The applicant has estimated the largest changes in the average values to occur during July nighttime hours when they will be +2.7 F° and -1.5%."

FES §5.6.8. Petitioners fail to challenge in any specific manner the calculations of the Applicant and the evaluation of the NRC Staff. The contention is without any basis and should be dismissed.

BISHOP CONTENTION 20:

This contention is based on the vague assertion that a "direct hit by a large lightning bolt could seriously

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impair the ability of the plant to operate safely. . . ."

Petitioners do not set forth how the plant might be affected nor the mechanism by which it would lose any safety function. Section 2.2.3.8 of the ACNGS PSAR presents in detail the plant design for lightning protection. Petitioners do not even allege that these design provisions are inadequate. The contention is vague and unsubstantiated and should be dismissed.

BISHOP CONTENTION 21:

Contention 21 asserts that the cooling lake will be a hazard to those who use it owing to the presence of radioactive contaminants. Beyond the generalized assertion, nothing of substance is alleged by Petitioners. Of particular significance, Petitioners are either unaware of, or are unable to address, the NRC Staff's assessment of radiological doses resulting from liquid radioactive effluents which postulates for analytical purposes, an individual "who consumes fish harvested from the cooling lake, drinks water from the cooling lake, and uses the shoreline of the lake for recreation." That individual, by the Staff's reckoning, will receive a total annual body dose of 1.4 millirems. FES Supplement, p. S.5-26. Petitioners do not set forth a basis for challenging this analysis. The contention, being without any basis, should be denied.

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BISHOP CONTENTION 22:

Petitioners contend that the cooling lake is larger than necessary for one unit and should be reduced in size to minimize the withdrawal of land for the project. The lake size has been optimized with respect to its recreational purpose and to maintain some degree of flexibility to locate additional capacity at the site. (See NRC's ER Supplement, p. SH-52). It is well established in this proceeding that the land to be covered by the cooling lake is "a minute and insignificant percentage of similar land available for cultivation on national and state levels and a small percentage on a local level." (PID ¶73). The NRC Staff review of the lake as currently sized concludes that the "prime and unique farmland directly affected by construction of the station and inundation of the cooling lake represents a very small percentage of the total prime and unique farmland in Texas. (FSFES, p. S.4.-4.) Petitioners do not dispute either conclusion and present no triable issue of fact. The contention should be denied.

BISHOP CONTENTION 23:

Contention 23 discusses alternative sites with special emphasis on the STP site. Other alternatives are mentioned but not with the degree of specificity directed toward the STP site. Applicant would not object to the

admission of Contention 23 to the extent it deals with the STP site alternative, provided that Petitioners are consolidated (if found to have standing) with TexPirg for these purposes.

Dorothy F. Carrick

CARRICK CONTENTION 1:

Petitioner alleges that she and/or her family will be adversely affected by radioactive emissions from ACNGS due to the proximity of her home to ACNGS. It is unclear whether this represents Petitioner's statement of her interest in the proceeding, as required by 10 CFR §2.714(a)(2), or a contention.

If this statement is offered as a contention, it is unparticularized and speculative. If Petitioner contends that ACNGS will not meet 10 CFR Part 50, Appendix I, she supplies absolutely no underlying basis. If, on the other hand, this is a challenge to 10 CFR Part 50, Appendix I, of the Commission's regulations, she makes no showing of "special circumstances" required by 10 CFR §2.758. This Board has previously rejected very similar contentions (Feb. 9 Order at 20-21), and this contention should also be rejected.

CARRICK CONTENTION 2:

Petitioner contends that the ACNGS cooling lake will increase the probability of flooding of the Brazos

River. This potential environmental effect was considered in the Partial Initial Decision, and a finding made that construction of ACNGS would not have a significant effect on flood levels and frequency in the Brazos River floodplain. PID ¶¶26-33. In the absence of newly discovered evidence or a material change in circumstances, relitigation of issues thoroughly explored in the PID is prohibited. ALAB-535 at 15-16. Petitioner has alleged neither new evidence nor changed circumstances and her contention should be dismissed.

CARRICK CONTENTION 3:

The first part of Petitioner's third contention relates to the generic issue of high level waste disposal. As this Board has stated previously:

"[I]n Natural Resources Defense Council, Inc. v. NRC, 582 F.2d 166 (1978), the Court of Appeals affirmed the decision of the Commission in NRDC, "Denial of Petition for Rulemaking", Docket No. 50-18, 42 Rd. Reg. 34391 (July 5, 1977) in holding that the Commission is not required to withhold action on pending or future applications for nuclear power reactor operating licenses until it makes a determination that high-level radioactive

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wastes can be permanently disposed of safely." Feb. 9
Order at 27.1/

The second part of this contention states Petitioner's objection to interim spent fuel storage at ACNGS. Petitioner fails to state an objection to the design of ACNGS nor does Petitioner provide any allegation of potential conflict with Commission regulations. FSFES Table S.5.19 includes the environmental effects of spent fuel storage, and FSFES §S.5.4.4 sets forth the Staff's conclusion that ACNGS may be operated within applicable limits for radiological impact on humans. Petitioner does not challenge this analysis. The contention should be dismissed for lack of specificity.

CARRICK CONTENTION 4:

Petitioner contends that the STP site would be preferable to Allens Creek for ACNGS, based on comparative

1/ On September 27, 1979, the Commission adopted SECY-79-379A, a Staff paper recommending procedures for its forthcoming generic proceeding with regard to high-level waste storage and disposal. The "Notice of Proposed Rulemaking" attached to SECY-79-379A, soon to be published in the Federal Register, states (at 5):

"The Commission has decided, however, that during this proceeding the issues being considered in the rulemaking should not be addressed in individual licensing proceedings. These issues are most appropriately addressed in a generic proceeding of the character here envisaged."

Thus, the generic issue of high level waste disposal remains beyond the scope of this proceeding.

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population levels near each site and decreased water consumption. Petitioner's contention consists of vague and generalized statements without the required bases on specificity.

Findings of site suitability with respect to population were made in the PID (¶¶81-82, 2 NRC at 798), and changes in demography since the FES (which was issued before the PID) are reflected in the FSFES (§S.2.1 and Tables S.2.1 through S.2.4). FSFES §S.9.2 at S.9-11 and S.9-14 considers the decreased water consumption and yet concludes the STP site is not obviously superior. Petitioner challenges neither the PID findings nor the FSFES analysis. In the absence of newly discovered circumstances or a material change in circumstances, neither of which are present here, relitigation of issues resolved by the PID is prohibited. ALAB-535 at 15-16.

Applicant does not believe that Ms. Carrick has established standing.^{2/} However, if she is found to have standing, this contention should be consolidated with TexPirg Contention 1 (i.e., alleging that the STP site has not been adequately considered as an alternative to Allens Creek).

^{2/} Ms. Carrick has never shown nor even alleged that she failed to intervene before because of restrictions in the prior notices. Thus, her petition is untimely and without a showing of good cause.

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CARRICK CONTENTION 5:

Petitioner contends that a cooling tower of unspecified type would be preferable to the proposed lake. This alternative was considered and rejected in the PID (¶¶63-64), and Petitioner has alleged no facts which would mandate relitigation of that decision.

Land subsidence resulting from groundwater withdrawal was similarly considered in the PID (¶¶114-116), as was the risk of flooding (¶¶26-33). Petitioner's vague and unspecific allegations concerning radiation levels in the lake present no triable issues of fact. Of particular significance, Petitioner is either unaware of, or is unable to address, the NRC Staff's assessment of radiological doses resulting from liquid radioactive effluents which postulates, for analytical purposes, an individual "who consumes fish harvested from the cooling lake, drinks water from the cooling lake, and uses the shoreline of the lake for recreation." That individual, by the Staff's reckoning, will receive a total annual body dose of 1.4 millirems. FSFES p. S.5-26. Petitioner does not set forth a basis for challenging this analysis, and in fact, appears to be challenging the Commission's regulations on radioactive emissions without the required showing of special circumstances (10 CFR §2.758).

The contention should be dismissed.

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Carolina Conn

CONN CONTENTION 1:

Based on economic and feasibility arguments, Petitioner alleges that a coal plant would be preferable to a nuclear plant for the Allen's Creek site. Petitioner supplies no comparisons of the environmental effects of coal versus nuclear plants, nor even acknowledges that FSFES § S.9.1.2.3 and Appendix S.D. include such a comparison and conclude that a nuclear plant is preferable. Petitioner identifies no errors in this analysis.

Contentions based on purely economic comparisons, without allegations that coal is environmentally superior to nuclear, are not within the scope of this proceeding.

Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162-63 & nn. 23-25 (1978). Thus, Petitioner's contention is outside the scope of this proceeding. For this reason, and in the absence of a basis for her contention set forth with reasonable specificity, this contention should be dismissed.

CONN CONTENTION 2:

Petitioner contends that the STP site would be preferable to Allens Creek for ACNGS, based on lower water consumption and comparative population levels near each site. Petitioner's contention consists of vague and generalized statements without the required basis or specificity.

FSFES § S.9.2. (at S.9-11 and S.9-14) considers the decreased water consumption and yet concludes the STP site is not obviously superior. Land subsidence resulting from groundwater withdrawal was exhaustively considered in the Partial Initial Decision and found not to be significant. (PID ¶¶113-116). Findings of site suitability with respect to population were made in the PID (¶¶81-82) and changes in demography since the FES (which was issued before the PID) are reflected in the FSFES (§§ S.2.1. and Tables S.2.1 through S.2.4). Petitioner challenges neither the PID findings nor the FSFES analysis.

In the absence of newly discovered circumstances or a material change in circumstances, neither of which are present here, relitigation of issues resolved by the PID is prohibited. ALAB-535 at 15-16. Accordingly, this contention should be rejected.

However, because this Board has accepted TexPirg Contention 1, alleging that the STP site has not been adequately considered as an alternative to Allens Creek, Applicant would not oppose this contention provided that Petitioner, if otherwise found to have standing, would be consolidated with TexPirg for this issue.

CONN CONTENTION 3:

Petitioner alleges that highway transportation of radioactive material will be subject to accidents. Although

it is unclear whether Petitioner intends that "radioactive material" refer to fresh fuel, spent fuel, or radioactive waste, the same regulatory considerations apply to each. Radioactive emissions from transportation are described in 10 C.F.R. § 51.20(g) and Summary Table S-4 and analyzed in FSFES § S.5.4.3.3 and Tables S.5.15 and S.5.18. Petitioner has alleged no "special circumstances," pursuant to 10 C.F.R. § 2.758, justifying an attack on these regulations, and has specified no errors in the Staff analysis. The contention further ignores that such transportation would be subject to Department of Transportation regulations, 49 C.F.R. Parts 170-179.

Since this Board has rejected nearly identical contentions involving fuel and waste transportation (Feb. 9 Order at 31 & 43) these contentions should also be rejected.

CONN CONTENTION 4:

Petitioner's final contention relates to the generic issue of high level waste disposal. This contention should be dismissed for the reasons set forth in response to Carrick Contention 3, above.

Elinore P. Cumings

CUMINGS CONTENTION 1:

Petitioner asserts that Applicant is not financially qualified to construct ACNGS "as noted in recent hearings

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requesting a rate increase." No further information is provided. Without a basis set forth with reasonable specificity (10 C.F.R. § 2.714(b)), this contention presents no triable issue of fact and should be dismissed.

CUMINGS CONTENTION 2:

Petitioner alleges that the ACNGS need for power analysis is inaccurate by failing to account for four specified items. Each alleged failure is described in a vague, conclusory statement and without the required bases or specificity.

Moreover, the premises behind the first three alleged failures are factually in error: FSFES § S.8.3.1 and Table S.8.13 describe planned new generation of Applicant; §§ S.8.2.3 and S.8.2.6 consider the potential effects of conservation; and § S.8.2.4 considers the effect of changes in rate structure. Petitioner has not identified any errors in these analyses. Petitioner's fourth and final alleged failure ("failure to provide for complete internalization of all significant external costs") is too vague to present a litigable issue of fact. The contention should be dismissed.

CUMINGS CONTENTION 3:

To the extent one can discern a contention here, Petitioner appears to be challenging Applicant's analysis of

1291 029

liquid pathways for radiological impacts to individuals set out in the ER-Supplement. However, Applicant's Environmental Report and its Supplement comprehensively address all factors which Petitioner claims are not adequately covered. Domestic water usage is discussed and quantified in ER § 2.2.3 and Figures 2.2-10 through 2.2-14. Liquid pathway mechanisms are described in ER § S.5.3.2.1, and radiological effects from food ingestion are quantified in ER Tables S.5.3-1 through S.5.3-3. Petitioner does not attack any of these analyses.

More importantly, FSFES § S.5.4 and Tables S.5.12 through S.5.14 present the Staff's review of these analyses and conclude that ACNGS will satisfy the requirements of 10 C.F.R. Part 20 and 10 C.F.R. Part 50, Appendix I. Without some specification as to the errors in this conclusion there is no litigable contention.

CUMINGS CONTENTION 4:

Petitioner contends that the STP site would be preferable to Allens Creek for ACNGS, based on decreased water consumption and comparative population levels near each site. Petitioner's contention consists of vague and generalized statements without the required bases or specificity.

FSFES § S.9.2 (at S.9-11 and S.9-14) in fact considers the decreased water consumption and concludes that

1291 030

the STP site is not obviously superior. Land subsidence resulting from groundwater withdrawal was exhaustively considered in the Partial Initial Decision and found not to be significant. Findings of site suitability with respect to population were made in the PID (§§81-82) and changes in demography since the FES (which was issued before the PID) are reflected in the FSFES (§ S.2.1 and Tables S.21 through S.2.4). Petitioner challenges neither the PID findings nor the SFES analysis.

In the absence of newly discovered circumstances of a material change in circumstances, neither of which are present here, relitigation of issues resolved by the PID is prohibited. ALAB-525 at 15-16. This contention should be rejected.

However, because this Board has accepted TexPirg contention 1, alleging that the STP site has not been adequately considered as an alternative to Allens Creek, Applicant would not oppose the contention provided that Petitioner, if otherwise found to have standing,^{3/} would be consolidated with TexPirg for this issue.

^{3/} Ms. Cumings has filed an untimely petition to intervene and has made no showing of good cause for the untimely filing. Ms. Cumings clearly cannot come within the provision of the most recent notice because she admits she did not previously attempt to intervene because she "did not know about the proposed facility nor about the earlier hearing."

CUMINGS CONTENTION 5:

Petitioner contends that ACNGS will emit more radiation than other plants. This statement is totally lacking in basis. FSFES § S.5.4.4 concludes that ACNGS will comply with 10 C.F.R. Part 20 and 10 C.F.R. 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 C.F.R. § 2.758 is absent. This Board has previously rejected the same contentions (Feb. 9 Order at 20-21) and should also reject this reiteration.

CUMINGS CONTENTION 6:

Petitioner alleges that certain alternative energy sources have not been adequately considered. The contention is stated in general and conclusory terms, without support, and without the required bases and specificity. Furthermore, each of the energy sources cited by Petitioner (natural gas, solid waste, solar, hydro, and wind), as well as others, are evaluated in the FSFES § S.9.1.2. Petitioner has not challenged these analyses with any reasonable specificity. Thus, the contention raises no triable issue of fact and must be dismissed.

1291 032

However, because this Board has accepted TexPirg Contention 5, alleging that solid waste combustion has not been adequately considered as an alternative to ACNGS, Applicant would not oppose this contention, limited to the solid waste combustion alternative, provided that Petitioner, if otherwise found to have standing, would be consolidated with TexPirg for this issue.

CUMINGS CONTENTION 7:

Petitioner appears to attack the conclusion of FSFES § S.9.1.2.3 and Appendix S.D that nuclear-powered generation is preferable to that fired by coal. Petitioner identifies no specific errors in this analysis, but rather offers only unsupported generalities, e.g., "failure to correctly evaluate TOTAL costs versus total benefit". Without any bases set forth with reasonable specificity (10 C.F.R. § 2.714(b)), this contention raises no viable issue of fact and should be dismissed.

CUMINGS CONTENTION 8:

Petitioner's eighth contention relates to the generic issue of high level waste disposal. This contention should be dismissed for the reasons set forth in response to Carrick Contention 3, above.

CUMINGS CONTENTION 9:

Petitioner contends that further study needs to be made of the effects of low-level radiation. To the extent

that this contention has any relevance to ACNGS, it is an attack on the Commission regulations and shares the same fatal infirmities as Cumings Contention 5. For the reasons stated there, this contention should also be dismissed.

Stepnen A. Doggett

DOGGETT CONTENTION 1:

Petitioner claims that there are various available alternative energy sources which would render construction of ACNGS unnecessary. Much of the contention is based on pure speculation. In particular, the contention fails to identify the time frame in which the various alternatives would be available. Petitioner refers to synfuels, gasohol, solar power and biomass as potential alternative sources to ACNGS, but never alleges that these sources will be available within a time frame compatible with the demand requirement which ACNGS will serve. As the NRC Staff has previously pointed out, this Board need not consider alternative energy sources which are based on pure speculation as to their availability within the time frame in which the proposed facility is needed. "NRC Staff Response to More Contentions Submitted by F. H. Potthoff, III," dated June 18, 1979, pp. 2-4.

Moreover, the statements made by Petitioner under each of the identified alternative sources lack the specificity

1291 034

or particularity required by 10 C.F.R. § 2.714. For example, Petitioner states that there is a significant potential for hydroelectric power, but never identifies where in Texas (a State almost completely lacking in the requisite natural attributes) the hydroelectric power stations might be sited nor how much power could be produced from these stations. Nor has Petitioner provided any basis to support his conclusory statements with respect to alternative sources of energy, other than broad references to popular newspapers and magazines which provide no supporting data as to the desirability, feasibility or availability of the various alternative sources. Accordingly, the contention fails to meet the requirements of 10 C.F.R. § 2.714 and should be dismissed.

DOGGETT CONTENTION 2:

The contention asserts that the STP site is superior to the ACNGS site. Although the supporting bases are expressed in only general terms and do not meet NRC requirements regarding specificity, the substance of the contention appears to be consistent with TexPirg Contention 1 previously admitted by the Board. In these circumstances, Applicant would not oppose the contention provided that Petitioner, if

1291 035

otherwise found to have standing, is consolidated with TexPirg with respect to this matter.^{4/}

DOGGETT CONTENTION 3:

Contention 3 states that a construction permit should not be granted for ACNGS because of a series of alleged quality assurance or quality control deficiencies at STP. The STP project incorporates a reactor of a different type from a different vendor; involves construction of almost twice the magnitude of the ACNGS project and is being built by a different engineer-constructor. Putting aside the question of whether the alleged deficiencies are at all untypical of construction projects of this type, Petitioner has failed to establish that the instances upon which he relies have any relevance or nexus to the Allens Creek project at all. Without some attempt at establishing this relevance, the contention should be dismissed for lack of appropriate basis.

DOGGETT CONTENTION 4:

Contention 4 asserts that HL&P is not financially qualified to construct the ACNGS project. The assertion

^{4/} Mr. Doggett has filed an untimely petition to intervene without a showing of good cause for the untimeliness. Mr. Doggett does not qualify under the most recent notice because he was not even aware of the prior notices.

1291 036

rests on vague speculation regarding the likely outcome of pending rate cases, the future price and availability of uranium and waste disposal costs, and possible design changes as a result of Three Mile Island studies. In all of this speculation there is not alleged a single underlying fact; the assertions are largely drawn from superficial press accounts, are entirely conclusory in nature and present no triable issue of fact.

To the extent the contention rests on cost increases experienced at the South Texas Project, no attempt has been made to show why this experience--at a totally different type of facility of almost twice the magnitude of the ACNGS project and being built by a different engineer-constructor in a different time frame--is relevant to ACNGS. The contention should be dismissed.

DOGGETT CONTENTION 5:

This contention states that a construction permit should not be issued because, in the event of an accident "it would be impossible to evacuate major portions of the Greater Houston Area population." Current regulations do not require that protective measures (including evacuation) be taken beyond the LPZ. A recently proposed amendment to 10 C.F.R. 50, Appendix E, would extend planning for evacuation

1291 037

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 amendment. As a consequence of Three Mile Island, the Commission has under consideration modification of its rules on emergency planning^{5/} 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.

Robin Griffith

GRIFFITH CONTENTION 1:

Petitioner's first contention relates to the effects of radioactive releases in normal operation. Petitioner acknowledges that "applicant will comply with the standards of the Nuclear Regulatory Commission" but expresses concern with respect to the adequacy of these standards, stating that "radiation in any amount causes cell damage. . . ."

^{5/} "Advanced Notice of Proposed Rulemaking on Adequacy and Acceptance of Emergency Planning Around Nuclear Facilities," 44 Fed. Reg. 41483, July 17, 1979.

1291 038

Clearly, Petitioner's quarrel is not with respect to compliance with applicable regulations but rather the adequacy of 10 C.F.R. Part 50, Appendix I. The contention is thus a challenge to the regulations which fails to set forth a basis for the challenge as required by 10 C.F.R. 2.758.

GRIFFITH CONTENTION 2:

Petitioner's second contention relates to the generic issue of high level waste disposal. The contention should be dismissed for the reasons set forth in response to Carrick Contention 3.

GRIFFITH CONTENTION 3:

Finally, Petitioner contends that thermal pollution will endanger fish and aquatic organisms, rendering the cooling lake unfit for recreational uses. That matter was dealt with extensively in the PID (¶¶ 39-43) and Petitioner specifies no new facts warranting a re-examination of those findings. Likewise, the assertion with respect to excessive algae growth in the cooling lake due to chemical discharges from Wallis, Sealy and ACNGS have already been taken into account in the FES (pp. 4-6 to 4-9) and the FSFES (S.4-7 to S.4-8) and no new facts are suggested by Petitioner which would alter the conclusion that "the proposed cooling lake should provide a valuable recreational facility." (SFES, p. S.iv).

1291 039

However, because the Board has accepted TexPirg Contention 2 concerning the recreational value of the cooling lake, Applicant would not oppose this contention provided that Petitioner, if otherwise found to have standing, would be consolidated with TexPirg on this issue.

Leotis Johnston

JOHNSTON CONTENTION 1:

Petitioner alleges that he and/or his family will be adversely affected by radioactive emissions from ACNGS due to the proximity of his home to ACNGS. It is unclear whether this represents Petitioner's statement of his interest in the proceeding, as required by 10 C.F.R. § 2.714(a)(2), or a contention.

If Petitioner contends that ACNGS will not meet 10 C.F.R. Part 50, Appendix I, he supplies no underlying basis. If, on the other hand, this is a challenge to 10 C.F.R. Part 50, Appendix I, of the Commission's regulations, he makes no showing of "special circumstances" required by 10 C.F.R. § 2.758. This Board has previously rejected contentions of this exact same note (Feb. 9 Order at 20-21); no reason exists why this contention should not be similarly rejected.

JOHNSTON CONTENTION 2:

In the first part of this contention, Petitioner alleges that transportation of nuclear wastes will be subject

1291 040

to accidents. Radioactive emissions from transportation are described in 10 C.F.R. § 51.20(g) and Summary Table S-4 and analyzed in SFES §§ 5.4.3.3 and Table S.5.15 and S.5.18. Petitioner has alleged no "special circumstances" pursuant to 10 C.F.R. § 2.758 supporting an attack on these regulations, and has specified no errors in the Staff analysis. This contention further ignores that such transportation would be subject to Department of Transportation regulations, 49 C.F.R. Parts 170-179. Finally, this Board has rejected similar contentions involving waste transportation (Feb. 9 Order at 43) and this part of the contention should be similarly rejected.

In a second part of his contention, Petitioner alleges that occupants of vehicles on Interstate 10 create too great a population density for ACNGS. This allegation is too vague and speculative to present a triable issue of fact, and fails to state bases with the required specificity. Furthermore, Petitioner fails to allege any violation of Commission regulation. It is clear that "population center distance" as defined in 10 C.F.R. § 100.3(c) contemplates a concentration of "residents", and thus, his reliance on vehicular traffic is another attack on Commission regulations prohibited by 10 C.F.R. § 2.758 in the absence of a showing of "special circumstances." The contention should be dismissed.

1291 041

JOHNSTON CONTENTIONS 3, 4:

In these contentions, Petitioner asserts that the construction permit should be denied because of the limitations or liability in the Price-Anderson Act and an asserted non-availability of private insurance coverage on nuclear plants. The latter premise is in error, because nuclear liability insurance is in fact provided by pools of private insurers.

Moreover, these contentions are clear challenges to the Price-Anderson Act, which was recently upheld by the Supreme Court. See, Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 98 S.Ct. 2620 (1978).

Consequently, these contentions are clearly improper and should be rejected. Florida Power & Light Co. (Turkey Point Units 3 and 4), 4 AEC 787, 788 (1972). Moreover, this Board has previously rejected identical contentions (Feb. 9 Order at 28 & 75), and these contentions should be rejected for the same reasons.

JOHNSTON CONTENTION 5-1st:

Petitioner's first of two contentions numbered "V" (numbered for identification here as 5-1st) relates to the generic issue of high level waste disposal. The contention should be dismissed for the reasons set forth in response to Carrick Contention 3, above.

1291 042

JOHNSTON CONTENTIONS 5-2nd, 6-1st:

Petitioner contends that the STP site would be preferable to Allens Creek for ACNGS, based on comparative population levels near each site (Contention 5-2nd); and less significant environmental effects of various types (Contention 6-1st). Petitioner's support for these contentions, however, consists of vague and generalized statements without the required factual bases.

Findings of site suitability with respect to population were made in the PID (§§81-82) and changes in demography since the FES (which was issued before the PID) are reflected in the FSFES (§ S.2.1 and Tables S.2.1 through S.2.4). FSFES § S.9.2 (pp. S.9-11 and S.9-14) considers the decreased water consumption from construction at STP and yet concludes the STP site is not obviously superior. In addition, the PID found that the ACNGS site is only of average productivity and constituted only a minute and insignificant percentage of similar land available for cultivation. (§§65-78). Finally, FSFES § S.9.2 (at S.9-13 and -14) considers the differing socioeconomic impacts of construction at STP and at the Allens Creek site. Petitioner in no way challenges either the PID findings or the FSFES analyses. This contention should therefore be rejected.

1291 043

However, because this Board has accepted TexPirg Contention 1, alleging that the STP site has not been adequately considered as an alternative to Allens Creek, Applicant would not oppose the contention provided that Petitioner, if otherwise found to have standing, would be consolidated with TexPirg for this issue.

JOHNSTON CONTENTION 6-2nd:

Petitioner alleges that "solid waste storage facility [sic]" (presumably, a solid waste combustion facility) has not been adequately considered as an alternative energy source. The contention is stated in general and conclusory terms, without support, and without the required bases. Furthermore, both solid and organic waste combustion are evaluated in FSFES § S.9.1.2 (at S.9-5 through -7), and neither were found to be a viable alternative to ACNGS. Petitioner has not challenged this analysis. Thus, the contention raises no triable issue of fact and must be rejected.

However, because this Board has accepted TexPirg Contention 5, alleging that solid waste combustion has not been considered as an alternative to ACNGS, Applicant would not oppose the contention, limited to the solid waste combustion alternative, provided that Petitioner, if otherwise found to have standing, would be consolidated with TexPirg for this issue.

1291 044

Rosemary N. Lemmer

LEMMER CONTENTION 1:

Petitioner alleges that the Allens Creek site is unsuitable for a nuclear power plant because of projected population concentrations. Findings of site suitability with respect to population were made in the PID (¶¶81-82), and changes in demography since the FES (which was issued before the PID) are reflected in the FSFES (§ S.2.1 and Tables S.2.1 through S.2.4). Petitioner has challenged neither the PID findings nor the FSFES analysis, nor has she alleged any potential conflict with NRC regulations from this postulated shift in population. This Board has previously rejected a nearly identical contention concerning changes in population (Feb. 9 Order at 43-44) and should also reject this contention.

LEMMER CONTENTION 2:

Petitioner contends that the STP site would be preferable to Allens Creek for ACNGS, based on decreased water consumption and comparative population levels near each site. Petitioner has, however, ignored FSFES § S.9.2 (pp. S.9-11 and S.9-14) which considers the issue of decreased water consumption and yet affirmatively concludes the STP site is not obviously superior. The PID found that construction of ACNGS would withdraw an insignificant amount of land

1291 045

of average productivity from potential cultivation. (¶¶65-78). As noted with respect to Lemmer Contention 1, both the PID and FSFES address the suitability of the site with respect to population. Petitioner does not challenge either the PID findings or the FSFES analysis. In the absence of newly discovered circumstances or a material change in circumstances, neither of which are present here, relitigation of issues resolved by the PID is prohibited. ALAB-535 at 15-16. This contention should thus be rejected.

However, because this Board has accepted TexPirg Contention 1, alleging that the STP site has not been adequately considered as an alternative to Allens Creek, Applicant would not oppose the contention provided that Petitioner, if otherwise found to have standing, would be consolidated with TexPirg for this issue.

LEMMER CONTENTION 3:

Petitioner's third contention relates to the generic issue of high level waste disposal. The contention should be dismissed for the reasons set forth in response to Carrick Contention 3, above.

LEMMER CONTENTION 4:

Petitioner contends that "more emphasis on conservation" could eliminate the need for power from ACNGS. This contention is a vague and speculative. Petitioner supplies

1291 046

no specifics as to the potential for reduction of electrical consumption and, therefore, there is no triable issue of fact in this contention.

Petitioner further seeks to have the NRC "promote tax breaks for consumer insulation, higher utility rates for commercial users ..., peak hour rates, inter-connected pipelines between H.L.&P., and other utilities and consumer education" The Staff has evaluated the potential impacts of conservation, including conservation measures mentioned by Petitioner, and concluded that any potential reduction in electric consumption resulting therefrom is speculative and does not reduce the desirability of ACNGS (FSFES §§ S.8.2.3, S.8.2.6). Petitioner does not specifically take issue with this analysis; on the contrary, Petitioner appears to have completely ignored it. Furthermore, the NRC has no jurisdiction to "promote" tax breaks nor higher utility rates. HL&P is not in the pipeline business and does promote consumer education. In the absence of proper bases for the contention set forth with reasonable specificity (10 C.F.R. § 2.714(b)), the contention should be dismissed.

LEMMER CONTENTION 5:

Petitioner favors a ban on nuclear power plant licensing until a consensus among experts is reached as to the effects of low-level radiation. To the extent that this

1291 047

contention has any relevance to ACNGS, it is an attack on Commission regulations concerning radiological emissions without the showing of special circumstances required by 10 C.F.R. § 2.758. Accordingly, this contention must be dismissed.

LEMMER CONTENTION 6:

Petitioner makes the assertion that "solar energy is much preferred and should be given full support." This is a statement of her beliefs without relevance to ACNGS or this proceeding. It raises no triable issue of fact and should be dismissed.

Kathryn Otto

By her own statement, Petitioner has admitted that she did not fail to file a petition under the Board's May 31 and September 11, 1978 notices because of the restrictions in those notices, but, rather, because she was unaware that the proposed plant was a nuclear plant. Therefore, Petitioner has failed to meet the requirements set forth in the Board's Supplementary Notice of Intervention Procedures and accordingly, the petition should be dismissed as untimely without good cause shown.

OTTO CONTENTION 1:

Petitioner's one contention states that a coal fired plant should be built at ACNGS rather than a nuclear

1291 048

plant. This contention lacks a basis set forth with reasonable specificity. Besides a vague and unsupported comparison of pollution from coal plants and radiation from nuclear plants, Petitioner does not set forth in what specific aspects a coal plant would be environmentally preferable to a nuclear plant. Petitioner fails to acknowledge that such a comparison was performed and is reported in FSFES § S.9.1.2.3 and Appendix S.D. Petitioner does not allege any error in that evaluation. The contention should be rejected, and with it, the petition.

Frances Pavlovic

PAVLOVIC CONTENTION 1:

Petitioner contends that, because the fifty-mile zones of ACNGS and the South Texas Project overlap, population in the overlap zone would be exposed to double dosages of radiation, thus distorting the evaluation of radiological effects upon individuals in the overlap area. This statement is based on a total misconception of the applicable Commission regulations and the analyses performed in compliance with those regulations.

The Commission's regulations concerning radiological releases focus on the postulated individual located at the point of maximum exposure on the site boundary, not on the periphery of a fifty-mile zone. See 10 C.F.R. Part 50, Appendix I, "Concluding Statement of Position of the

Regulatory Staff (Docket-RM-50-2)"; 10 C.F.R. § 100.11(a). Obviously, an individual located forty or fifty miles from each reactor (if, indeed, the physical effects reach far enough to create such overlap zones) would, in compliance with the regulations, receive significantly less than the individual at the site boundary less than a mile away from the reactor. Moreover, it is clear that the Commission's regulations preclude consideration of the combined radiological effects of reactors located at geographically separate sites. 10 C.F.R. Part 50, Appendix I, n. 1 & 3 ("Background' means the quantity of radioactive material in the effluent from light-water-cooled nuclear power reactors at a site that did not originate in the reactors").

As the foregoing reveals, this contention represents a challenge to 10 C.F.R. Part 50, Appendix I, of the Commission's regulations without the showing of "special circumstances" required by 10 C.F.R. § 2.758. This Board has previously rejected similar contentions (Feb. 9 Order at 20-21), and should do the same here.

PAVLOVIC CONTENTION 2:

Petitioner contends that the appropriate center of population for ACNGS is the area around Sealy, 10 miles from the ACNGS site with a stated population of 3,211, plus the occupants of vehicles on Interstate 10 and other identified

1291 050

roads within 10 miles of the site. It is clear that "population center distance" as defined in 10 C.F.R. § 100.3(c) contemplates a concentration of "residents" and thus Petitioner's reliance on vehicular traffic is an attack on Commission regulations prohibited by 10 C.F.R. § 2.758 in the absence of "special circumstances" not present here.

Additionally, the PID considered and rejected Sealy as a center of population, and instead found that the city of Rosenberg was the proper center (¶81). Moreover, as noted in Supplement 2 to the SER (at p. 2-4):

"... even if Sealy or Katy were to grow so as to become the nearest population center, the distance from the site to the nearest population center would still be greater than one and one-third times the low population zone outer radius of 3.5 miles."

Thus, ACNGS would comply with the applicable Commission regulation, 10 C.F.R. § 100.11(a)(3), even if the premise underlying this contention were established. Accordingly, the contention should be dismissed.

PAVLOVIC CONTENTION 3:

Petitioner contends that the ACNGS site could be better used for agricultural purposes. Petitioner states no basis and provides no specificity for her contention. This issue was considered and resolved in the PID, and a finding made that the ACNGS site is only of average productivity and constituted only a minute and insignificant percentage of similar land available for cultivation (¶¶65-78). In the

absence of newly discovered evidence or a material change in circumstances, relitigation of issues thoroughly explored in the PID is prohibited. ALAB-535 at 15-16. Petitioner has alleged neither, and, therefore, the contention should be dismissed.

PAVLOVIC CONTENTION 4:

Petitioner contends that a program of conservation "sponsored," "encourage[d], and "suggest[ed]" by Applicant could eliminate the need for power from ACNGS. This contention is impermissibly vague and speculative. For example, Petitioner makes no attempt to quantify the potential reduction of electric consumption attributable to conservation. The Staff has evaluated the potential impacts of conservation, including conservation measures mentioned by Petitioner and concluded that any potential reduction in electric consumption resulting therefrom is speculative and does not reduce the desirability of ACNGS (FSFES §§S.8.2.3, S.8.2.6). Petitioner does not challenge or even acknowledge this analysis. In the absence of proper bases for the contention set forth with reasonable specificity (10 CFR §2.714(b)), the contention should be dismissed.

PAVLOVIC CONTENTION 5:

Petitioner contends that Applicant should be required to install an off-site radiological monitoring

1291 052

system with certain characteristics. Applicant has in fact proposed an operational radiological monitoring program to satisfy Commission requirements and the Staff has deferred review of that program until the operating license stage (FES §6.2, SFES §S.6.0 at S.6-5). The Staff reasons that review of the proposed operational monitoring program, if deferred, would be able to draw on the results of the pre-operational monitoring program.

Petitioner alleges no fault in Applicant's proposed program nor specified any hardship that might result from deferral of consideration of the operational monitoring program until the operating license hearing, other than stating "I understand that operations [sic] licenses are often pro forma. . . ." However, Commission regulations contemplate the deferral of certain issues in this fashion. See, 10 CFR §50.35(a); Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-232, 8 AEC 635 (1974). In the absence of any justification for the premature litigation of this issue, the contention should be dismissed.

However, because this Board has accepted Hinderstein Contention 9, calling for monitoring stations to measure chemical air pollution and air radioactivity levels at certain locations downwind from the plant (April 11 Order at 6), Applicant would not oppose the contention provided

that Petitioner, if otherwise found to have standing, would be consolidated with Intervenor Hinderstein on this issue.

PAVLOVIC CONTENTIONS 6, 7 & 8:

In these contentions, Petitioner asserts a series of claims about the postulated shipment of nuclear wastes. All three contentions are speculative and lack basis, in that Petitioner assumes rail transportation of spent fuel to an unspecified reprocessing plant using unknown routes "conceivably" passing through populated areas. This totally hypothetical scenario presents no triable issue of fact. Furthermore, this Board has rejected this same contention involving waste transportation (Feb. 9 Order at 43), and should do so again here for the same reasons.

In Contention 6, Petitioner alleges that railroad transportation of nuclear wastes will be subject to accidents. Radioactive emissions from transportation are described in 10 CFR §51.20(g) and Summary Tables S-4 and analyzed in FSFES §S.5.4.3.3 and Tables S.5.15 and S.5.18. Petitioner has alleged no "special circumstances" pursuant to 10 CFR §2.758 so that she might attack these regulations, and has specified no errors in the FSFES analysis. This contention further ignores that such transportation -- if it were to happen -- would be subject to Department of Transportation regulations, 49 CFR Parts 170-179.

1291 054

In Contention 7, Petitioner postulates cumulative effects of waste shipments from ACNGS and other (unspecified) nuclear plants along unidentified rail routes. This contention shares the same fatal infirmities as Contention 6.

In Contention 8, Petitioner alleges that rail shipments of nuclear waste will create a danger to highway travelers at railroad crossings. Petitioner does not distinguish the dangers from trains transporting nuclear waste from any other type of train, and in any event this Board cannot remedy the problem of unsafe railroad crossings.

In sum, none of Petitioner's allegations frame a litigable issue appropriate for consideration in this forum and all three contentions should be dismissed.

PAVLOVIC CONTENTION 9:

Petitioner here alleges that the Staff evaluation of alternative energy sources is in error because it

"... consider[ed] each individual alternative source independently and not as part of a multi-source system.

"I further contend that a decentralized system utilizing alternative sources in conjunction with the existing system would be less wasteful of energy, especially electricity; use less non-renewable resources; be more economical to build, maintain and operate; and be safer to workers and populations now without posing any health threats to future generations."

To support this contention Petitioner states that Applicant could "supplement its present system with one or more alternative sources in each locality [served by Applicant.]"

1291 055

What constitutes an "alternative source" is, however, never specified; nor is any other facet of Petitioner's scheme described.

Petitioner cites a study discussing alternative energy sources for Pacific Gas & Electric Company, but there is not even a suggestion in the contention that the northern California coast and southeast Texas have comparable energy problems, resources, and environments. This study has no demonstrated relevance to ACNGS.

Petitioner's unsupported contention is total conjectural and should be rejected.

PAVLOVIC CONTENTION 10:

Petitioner contends that the ACNGS construction permit should not be issued until after the Kemeny Commission has made its final report and recommendations concerning TMI-2. As this Board has previously ruled, this licensing proceeding need not be deferred pending completion of all the reports and studies of the Three Mile Island accident. (Order, April 13, 1979, at 1). This contention does not raise a triable issue of fact, and should be rejected.

PAVLOVIC CONTENTION 11:

Petitioner's final contention relates to the generic issue of high level waste disposal. The contention should be dismissed for the reasons set forth in response to Carrick Contention 3, above.

129 056

Charles Andrew Perez

PEREZ CONTENTION:

Petitioner's "contention" on drywell design is apparently contained in a statement that "a structural integrity test is insufficient because a loss of coolant accident in even the small or intermediate range can result in a temperature transient inside the containment of such a magnitude that the thermal shock received by the concrete reactor pedestal could result in cracking of the foundation and drywell to the point where its strength would be seriously affected, particularly for future seismic or LOCA transients, thus jeopardizing future public safety." Petitioner's concern appears to be that the drywell pressure test^{6/} does not test the drywell for temperature effects.^{7/} There is no litigable issue here because Applicant does not rely on the drywell pressure test to justify the drywell design temperature. The drywell design temperature is justified by conservative

6/ Applicant presumes the structural integrity test referred to by the Petitioner is the drywell pressure test described in section 3.8.3.7.1.1 of the Allens Creek PSAR.

7/ Petitioner's reference to the reactor pedestal is misconceived. The Allens Creek reactor pedestal is made of two concentric steel cylinders. Although the space between these steel cylinders is filled with concrete for seismic mass considerations, the concrete is not load bearing (PSAR, p. 3.8-21). Hence, Petitioner's contention can not apply to the reactor pedestal.

1291 057

analysis of a small break loss-of-coolant accident (PSAR, p.6.2-25).

Petitioner does not disagree with Applicant's design temperature for the drywell, but may be asserting that the drywell will fail at this temperature. Should this be Petitioner's contention, it must be rejected for lack of basis. The only statement which could serve as support for such a contention refers to an accidental pressurization of the drywell at the Commonwealth Edison, Dresden 2 and 3 plants in 1971. The event to which Petitioner alludes actually occurred in June, 1970 and was an event involving drywell isolation. In this incident safety-relief valves discharging into the Dresden Mark I drywell produced an over pressurization which resulted in damage to power range monitoring cable. No structural damage to the drywell was reported.^{8/} No other incident of the variety postulated by

^{8/} The Dresden incident is not applicable to the Mark III drywell of Allens Creek for two reasons. First, the safety-relief valves for Allens Creek discharge to the suppression pool, not the drywell. Second, any transient which pressurizes the drywell to 2 psig or greater results in a reactor scram that would limit the pressure and temperature effects of any incident which would pressurize the drywell, including a small break LOCA.

1291 058

Petitioner has occurred at Dresden or elsewhere. Hence, Petitioner has absolutely no factual basis to support a contention regarding drywell damage.^{9/}

William J. Schuessler

SCHUESSLER CONTENTIONS 1, 2, 3, 4, 5, & 8:

All of these vague contentions refer to possible injuries to health and property as a result of the release of radioactive material. This entire group of unsupported assertions may be accurately described as statements of dissatisfaction either with the Commission's regulations governing normal or accidental releases or with the Applicant's design and procedures for complying with those regulations. If it is the former, it totally lacks the showing of special circumstances required by 10 C.F.R. §2.758. If it is the latter, there is not a shred of supporting bases accompanying the complaints. In either event, the contentions should be dismissed.

^{9/} Petitioner also mentions the General Electric pool swell tests and load effects of safety-relief valve discharge. Applicant cannot discern a contention here nor is there any nexus between this discussion and Petitioner's contention on concrete cracking. Hence, this portion of Petitioner's petition should be disregarded.

1291 059

SCHUESSLER CONTENTIONS 6 & 14:

Contentions 6 and 14 are built upon two false premises. The first is that completed emergency plans of the Applicant, the State and local governments must be in place prior to issuance of a construction permit. The Commission's regulations (10 CFR 50, Appendix E, Section III) require that the Final Safety Analysis Report submitted at the operating license state "contain plans for coping with emergencies," not the PSAR submitted with the construction permit.

Second, evacuation of the Houston area is not required by existing or proposed emergency plan regulations. Existing regulations contemplate evacuation only within the Low Population Zone (LPZ). 10 CFR 50, Appendix E. A recently proposed amendment to 10 CFR 50, Appendix E, would extend planning for evacuation beyond the LPZ in special circumstances "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 amendment. As a consequence of Three Mile Island, the Commission has under consideration modification

1291 060

of its rules on emergency planning^{10/}, 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 contentions should be dismissed.

SCHUESSLER CONTENTION 7:

Contention 7 seeks to raise the question of disposal of high level radioactive waste. The contention should be dismissed for the reasons set forth in response to Carrick Contention 3, above.

SCHUESSLER CONTENTION 9:

Contention 9 raises a question flowing from Petitioner's economic interest as a ratepayer of the Applicant, a matter not cognizable under NRC rules and precedent. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (December 23, 1976).

SCHUESSLER CONTENTION 10:

This contention suggests that if Applicant would make interstate interconnections it could forego construction of Allens Creek and that construction of the interconnections would be an environmentally preferable alternative

^{10/} "Advanced Notice of Proposed Rulemaking on Adequacy and Acceptance of Emergency Planning Around Nuclear Facilities," 44 Fed. Reg. 41483, July 17, 1979.

1291 061

to "building a large nuclear plant." In support of this contention Petitioner cites hearings before the Federal Energy Regulatory Commission (FERC), which Applicant presumes to be the hearings on the application for interconnections filed by the Central and South West Corporation (CSW). Petitioner is obviously unaware that the interconnections proposed by CSW are for the purpose of integrating the CSW operating companies so they can build new nuclear and coal plants on a joint basis. Thus, the proposed interconnections do not have the purpose of avoiding construction of new nuclear plants.

Additionally, no utility in that proceeding is offering to sell Applicant any power whatsoever. Nor does Petitioner identify any utility which has any excess capacity for sale, let alone enough power to eliminate the need for Allens Creek. Petitioner has not come forward with any support for the assertion that Applicant could avoid construction of Allens Creek by interconnecting with more electric utilities than it is now interconnected with. The contention is founded on sheer speculation, apparent, concocted from a complete misconception of the proceedings before FERC, and should be dismissed.

1291 062

SCHUESSLER CONTENTION 11:

Petitioner attacks Applicant's comparison of nuclear and coal-fired power generation on the basis of a purported radical new design in coal furnace scrubbers. What Petitioner has overlooked, however, is the crucial fact that Applicant's and Staff's comparative analysis assumes the use of Western low-sulfur coal and further assumes scrubbers are not installed on the coal plants used for purposes of comparison. Hence, the balance struck in favor of nuclear on health and direct economic costs (FSFES §S.9.1.2.3.) cannot be upset by any changes in scrubber performance, no matter how revolutionary. The contention should be dismissed for lack of basis.

SCHUESSLER CONTENTIONS 12 & 13:

Contentions 12 and 13 are premised on a series of speculative events, the primary event being the "expected financial losses related to pullout of STP' . . . by Austin and by San Antonio." From this rambling speculation Petitioner concludes that HL&P will not need Allens Creek, and that HL&P will be "unable to give reasonable assurance that these conditions will not compromise the Applicant's clear self-interest in safety. . . ." The simple fact is that neither Austin nor San Antonio have elected to sell their shares of the South Texas Project. Unless and until such sales take place the main factual premise for the contentions

1291 063

remains in the realm of speculation, not fact. Without the essential premises being established as a fact the remainder of the contentions evaporate into irrelevancy. Contention 13 also fails for the reasons set forth in response to Doggett Contention 3 (i.e. there is no demonstrated relevance between STP and ACNGS). In summary, both contentions are based wholly on conjectural events and should be dismissed.

SCHUESSLER CONTENTION 15:

This contention asserts that ACNGS is a "bloated energy station . . . , a forbidding hulk . . . , [an] abominable structure . . . [which] will stand as a lamentable symbol of man's folly. . . ." Beyond this hyperbole (which does not merit or require a response) Petitioner does not address the discussion of aesthetic impacts in FES §5.6.5, FSFES §S.5.6.1, and ER §§3.1 and S3.1. Petitioner is thus plainly incorrect in asserting that the Applicant and NRC Staff have not considered the "aesthetic impact" of ACNGS. Petitioner has not challenged this analysis in any respect, and the contention should be dismissed.

Patricia L. Streilein

STREILEIN CONTENTIONS 1 and 3:

Relying on a series of vaguely related points, Petitioner appears to be making the single argument that the STP site is superior to the ACNGS site. Each of the supporting

1291 064

points is deficient, and, hence, the general argument fails to establish a valid contention.

As to Petitioner's first point, the PID held that the ACNGS site is only of average productivity and constituted a minute and insignificant percentage of similar land available for cultivation. (§§65-78). FSFES §S.4.3.1 further states that the effect of ACNGS construction upon local flora and fauna, including geese, will be minimized in terms of region-wide populations. Petitioner makes no showing to challenge these analyses. The PID further considered thermal effects of ACNGS operation on the Brazos River and found those effects insignificant (§§39-43). Thus, none of Petitioner's bases supporting her STP alternative site contention present independent triable issues of fact.

Applicant's Environmental Report described in detail the radiological effects of ingestion of aquatic life from the Brazos River. Liquid pathway mechanisms are also described in §S.5.3.2.1, and radiological effects from food ingestion are quantified in Tables S.5.3-1 through S.5.3-3. Petitioner does not specifically argue with any of these analyses.

More importantly, FSFES §S.5.4. and Tables S.5.12 through S.5.14 presents the Staff's review of these analyses and concludes that ACNGS will satisfy the requirements of 10 CFR Part 20 and 10 CFR Part 50, Appendix I. Petitioner does

1291 065

not note any exception to this conclusion, and thus her allegations, even if true, do not present a separate litigable contention.

Petitioner's third contention concerning the relative economics of construction of ACNGS versus STP, is subsumed in her basic STP alternative site contention.

Although Petitioner's points supporting these two contentions essentially all represent issues resolved by the PID, the substance of the contentions appears to be consistent with TexPirg Contention 1 previously admitted by the Board. In these circumstances, Applicant would not oppose the contentions provided that Petitioner, if otherwise found to have standing, is consolidated with TexPirg with respect to this matter.

STREILEIN CONTENTION 2:

Petitioner's second contention asserts that construction of the plant will either limit the current westward trend of Houston's development or the plant will end up in the middle of residential communities. The contention is clearly not litigable -- Applicant cannot be required to prove that both occurrences will not take place! Further, the contention is premised on unfounded challenges to population forecasts. Findings of site suitability with respect to population were made in the PID (1981-82) and changes in

1291 066

demography since the FES (which was issued before the PID) are reflected in the FSFES (§S.2.1 and Tables S.2.1 through S.2.4). Petitioner has challenged neither the PID findings nor the FSFES analysis, nor has she alleged any potential conflict with NRC regulations from this postulated shift in population. This Board has previously rejected a contention concerning changes in population (Feb. 9 Order at 43-44) and should reject this contention on the same grounds.

Glen Van Slyke

As a preliminary matter, it should be noted that Petitioner's further averments with respect to standing add little to Petitioner's prior "form" filing, other than to indicate that Petitioner lives within 45 miles of ACNGS and seeks to assert:

"... his constitutionally protected rights to freedom of association, political assembly, and to freedom of speech and to peacefully assemble with others for a redress of grievances, and particularly through public speaking, rallies, teach-ins, assemblies, meetings, pickets and marches, to continue to oppose the construction of Allens Creek plant, and to encourage others to do so."

These assertions establish that Petitioner is marginally within the "geographic zone of interest" but leave a substantial question as to whether the interests sought to be protected -- defense of civil liberties -- are within the "zone of interests" protected or regulated by the Atomic

1291 067

Energy Act of 1954 of NEPA. (See Feb. 9 Order, at 64-65). There also remains the serious question of whether Petitioner, who executed a "form" petition to intervene, has satisfied the Board's requirements for a showing that his prior failure to petition in response to the earlier notices was directly attributable to the restrictions on contentions.^{11/} These questions appear to be moot since Petitioner has not stated a single contention with the basis and specificity required by the Commission's regulations. 10 CFR 2.714.

VAN SLYKE CONTENTIONS 1 & 2

Contention 1 expresses the concern that in implementing 10 CFR 73.55(a)(1) Applicant may make a "violent and unjustified security response to peaceful protests." The concern is wholly speculative and without any asserted basis in fact.

^{11/} In this regard, Applicant notes that Mr. Van Slyke has conveniently ignored disclosing to the Board the fact that he was a member of the National Lawyers Guild when the Guild attempted to intervene in this proceeding before. See "Supplement to Petition to Intervene of Petitioner, Houston Chapter, National Lawyers Guild, Inc.", Nov. 17, 1978, Exhibit 7 (letter signed by Glen Van Slyke, FOIA Coordinator). Applicant suggests that the similarity between contentions raised by the Guild and by Mr. Van Slyke is not a matter of mere coincidence.

1291 068

Contention 2 cites many requirements of 10 CFR 73, Appendix B and, as in Contention 1, speculates that implementation of these requirements will result in "illegal surveillance and harrassment . . ." directed against Petitioner. This contention is likewise wholly speculative and does not identify a triable issue of fact on which the parties may present evidence.

VAN SLYKE CONTENTION 3:

Contention 3 complains of failures on the part of Applicant to specify how it will implement the requirements of 10 CFR 73, Appendix C which sets out the requirements for a "Safeguards Contingency Plan." To the extent the contention is based on the premises that such a plan must be part of an application for a construction permit it is in error. That requirement applies only to an application for an operating license. 10 CFR 50.34(d)

Petitioner has attempted to set out three contentions, all relating his civil liberties interests to the ACNGS security plan requirements. For the reasons set out above, none of the contentions are admissible. In a larger sense, however, the instant petition does not assert that Applicant will not comply with applicable security regulations, but that the regulations themselves are inadequate

1291 069

and subject to abuse. As the Board has previously noted, this type of issue does not come within the "zone of interests" to be protected by the Atomic Energy Act. (February 9 Order at 64).

Marlene R. Warner

WARNER CONTENTION 1:

Petitioner's sole contention is a direct attack on Commission regulations. In her own words (at 3-4):

"I contend that present regulations are inadequate to protect the public health and safety, and that normal emission levels should be examined and brought into conformance with the Delany Clause of the 1958 Food Additive and the 1960 Color Additive Amendments to the Food Drug and Cosmetic Act."

This contention is a direct challenge to the Commission's regulations concerning normal emissions, as set forth in 10 CFR §§20.106, 50.34a and Appendix I to 10 CFR Part 50. Under the procedures provided in 10 CFR §2.758, a party may not challenge the validity of an NRC rule in a licensing proceeding without showing "special circumstances." Petitioner has made no such showing, and therefore, the contention should be rejected.

In addition, Petitioner has failed to comply with the Commission's regulations which require that the "bases" for a contention be set forth with "reasonable specificity." 10 CFR §2.714(b). Petitioner states no basis for her contention, and makes no attempt to relate her speculative contention

1291 070

to the design of Allens Creek Nuclear Generating Station. Indeed, Petitioner fails to recognize that the ACNGS Final Environmental Statement specifically considers radiological effects of ACNGS operation upon man, including those resulting from food ingestion, and demonstrates compliance with applicable Commission regulations. (FSFES §5.4 and Table S.5.14) Petitioner does not challenge this analysis.

Finally, Petitioner appears to have miscomprehended the import of the Delaney Clause of the Food Additives Amendment of 1958 to the Federal Food, Drug, and Cosmetic Act, 21 USC §348.^{12/} This provision regulates FDA approval of food additives, including radiation sources intended for use in food processing, as defined in 21 USC §321(s), and simply has no application to the operation of a nuclear power plant.

Petitioner's contention must be rejected for lack of basis.

Donald R. Weaver

WEAVER CONTENTION 1:

Petitioner alleges that he and his family will be adversely affected (a) as to their health, and (b) as to the

^{12/} Referred to by Petitioner as the "Delany Clause of the 1958 Food Additive and 1960 Color Additive Amendments to the Food, Drug, and Cosmetic Act." There is no Delaney Clause in the Color Additive Amendments of 1960, Pub L. 86-618, 74 Stat. 397 (July 12, 1960).

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value of their home, by radioactive emissions from ACNGS. It is unclear whether this represents Petitioner's statement of his interest in the proceeding, as required by 10 CFR §2.714(a)(2), or a contention.

If Petitioner contends that ACNGS will not meet 10 CFR Part 50, Appendix I, he supplies no underlying basis. If, on the other hand, this is a challenge to 10 CFR Part 50, Appendix I, of the Commission's regulations, he makes no showing of "special circumstances" required by 10 CFR §2.758. This Board has previously rejected similar contentions (Feb. 9 Order at 20-21), and should follow the same course here.

WEAVER CONTENTION 2:

Petitioner contends that the ACNGS cooling lake will increase the probability of flooding of the Brazos River. This potential environmental effect was considered in the PID, and a finding made that construction of ACNGS would not have a significant effect on flood levels and frequency in the Brazos River floodplain. (¶¶26-33). In the absence of newly discovered evidence or a material change in circumstances, relitigation of issues thoroughly explored in the PID is prohibited. ALAB-535 at 15-16. Petitioner has alleged neither, and accordingly his contention should be rejected.

1291 072

WEAVER CONTENTION 3:

Petitioner's unsupported and conclusory statement in the first part of this contention is that the alternative site analysis is inadequate in that it fails to take into account the reduction in size of the ACNGS facility. This conjecture plainly falls short of forming a contention with reasonable specificity.

In the second part of this contention, Petitioner alleges that the population center of metropolitan Houston is shifting westward toward the ACNGS site. Even assuming this to be true, no litigable contention is presented. Findings of site suitability with respect to population were made in the PID (¶¶81-82), and changes in demography since the FES (which was issued before the PID) are reflected in the FSFES (¶S.2.1 and Tables S.2.1 through S.2.4). Petitioner has challenged neither the PID findings nor the FSFES analysis, nor has he alleged any potential conflict with NRC regulations from this postulated shift in population. This Board has previously rejected a very similar contention concerning changes in population (Feb. 9 Order at 43-44) and it should do the same here.

Connie Wilson

WILSON CONTENTION 1:

Petitioner contends that since she lives between 30 and 33 miles from the proposed plant, she and her family

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may be affected by the "radioactive risk" of the construction of ACNGS. It appears that Contention 1 is a statement of the Petitioner's interest in this proceeding and, if so, it fails to identify the specific radioactive risk which may affect her interest. If construed as a contention, it should be dismissed. The contention is vague and has no supporting basis. For example, Petitioner fails to identify what "serious problem" at the proposed ACNGS concerns her. Moreover, Petitioner seems to be challenging the Commission's regulations in 10 CFR Part 50 Appendix I with respect to low level radioactive releases from the plant without a showing of special circumstances as required under 10 CFR §2.758.

WILSON CONTENTION 2:

Petitioner states that the ACNGS should be constructed at Bay City, presumably at the STP site, because "this would free the west of Houston, to remain safe for the greater number of people." This contention is without even a suggestion of supporting basis as required by 10 CFR §2.714. Petitioner's statement concerning the demography surrounding the proposed ACNGS was covered by the Board in the PID (1981-82) and Petitioner provides no information to challenge these conclusions. Moreover, Petitioner's claim that the proposed plant should be built at the STP site is unsupported except by a vague reference that "Bay City is already contaminated

1291 074

nuclear complex-wise...." Thus, the allegations set forth in Contention 2 are plainly not sufficient to establish a litigable contention on the issue of STP as an alternative site. However, to the extent Contention 2 overlaps TexPirg's Contention 1, Applicant has no objection to the admission of the contention provided that Petitioner is consolidated (if found to have standing) with TexPirg on this issue.

WILSON CONTENTION 3:

Petitioner contends that the license for ACNGS should be denied "because as of yet there is now [sic] solution for high-level radioactive waste and spent fuel-storage." This contention must be denied for the reasons set forth in response to Carrick Contention 3, above.

Petitioner also claims that she feels threatened by radioactive releases from possible transportation accidents. This issue is also inadmissible since the Commission's regulations, set forth in 10 CFR §51.20(g) and Table S-4, consider the environmental impacts from the transportation of radioactive materials, including accidents. Apparently, Petitioner seeks to litigate these environmental impacts without a showing of special circumstances as required by §2.758. Accordingly, this aspect of Contention 3 should also be denied.

1291 075

WILSON CONTENTION 4:

Petitioner states that "a solid waste plant would be more suitable for this site." Petitioner provides absolutely no basis to support her statement that a solid waste plant should be built at the ACNGS site. The contention appears nothing more than a statement of general support for a solid waste plant. It is excessively vague with no supporting basis and, therefore, must be dismissed.

WILSON CONTENTION 5:

Petitioner contends that a "six month study period" should be allowed following the date of the release of the report of the President's Commission studying the accident at Three Mile Island before any further action is taken in this proceeding. As the Board has previously ruled, this licensing proceeding need not be deferred pending completion of all the reports and studies of the Three Mile Island accident. (ASLB Order, April 13, 1979, p. 1). Petitioner

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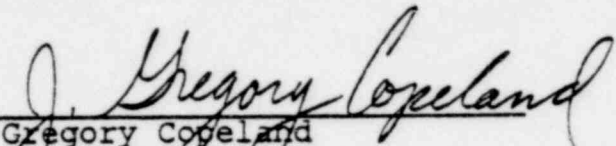
has set forth no basis to support this request and, accordingly,
the contention should be rejected.

Respectfully submitted,

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


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

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

ATTORNEYS FOR APPLICANT
HOUSTON LIGHTING & POWER COMPANY

TB:05:B

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APPENDIX A

Petitioners and Contentions to be Consolidated

To be Consolidated with Tex-Pirg
(Contention 1 - South Texas Project as alternative site)

Petitioner:	Bishop	Contention:	23
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	Cummings		4
	Doggett		2
	Johnston		5-2nd, 6-1st
	Lemmer		2
	Streilein		1, 3
	Wilson		2

To be Consolidated with Tex-Pirg
(Contention 2 - recreational value of cooling lake)

Petitioner:	Griffith	Contention:	3
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To be Consolidated with Tex-Pirg
(Contention 6 - solid waste combustion as alternative energy source)

Petitioner:	Cummings	Contention:	6 (limited to solid waste combustion)
	Johnston		6-2nd
	Schuessler		12 (limited to solid waste combustion)

To be Consolidated with Intervenor Hinderstein
(Contention 9 - specified types of offsite operational monitoring)

Petitioner:	Pavlovic	Contention:	5
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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	\$	Docket No. 50-466
	\$	
(Allens Creek Nuclear Generating	\$	
Station, Unit 1)	\$	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicant's Responses to Contentions of Petitioners Baker, Bishop, Carrick, Conn, Cumings, Doggett, Griffith, Johnston, Lemmer, Otto, Pavlovic, Perez, Schuessler, Streilein, Van Slyke, Warner, Weaver and Wilson in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, or by hand-delivery this 5th day of October, 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. Greer
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

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

John F. Doherty
4327 Alconbury Street
Houston, Texas 77021

Madeline Bass Framson
Robert S. Framson
4822 Waynesboro Drive
Houston, Texas 77035

Carro Hinderstein
8739 Link Terrace
Houston, Texas 77025

F. 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

Bryan L. Baker
1118 Montrose
Houston, Texas 77019

J. Morgan Bishop
Margaret Bishop
11418 Oak Spring
Houston, Texas 77043

Dorothy F. Carrick
Box 409, Wagon Rd. Rfd. #1
Wallis, Texas 77045

Carolina Conn
1414 Scenic Ridge
Houston, Texas 77043

Elinore P. Cumings
Route 1, Box 138V
Rosenberg, Texas 77471

Stephen A. Doggett
P. O. Box 592
Rosenberg, Texas 77471

Robin Griffith
1034 Sally Ann
Rosenberg, Texas 77471

Leotis Johnston
1407 Scenic Ridge
Houston, Texas 77043

Rosemary N. Lemmer
11423 Oak Spring
Houston, Texas 77043

Kathryn Otto
Route 2, Box 62L
Richmond, Texas 77469

Frances Pavlovic
111 Datonia
Bellaire, Texas 77401

Charles Perez
1014 Montrose Blvd.
Houston, Texas 77019

William Schuessler
5810 Darnell
Houston, Texas 77018

1291 084


Patricia L. Strelein
Route 2, Box 395C
Richmond, Texas

Glen Van Slyke
1739 Marshall
Houston, Texas 77098

Marlene R. Warner
6026 Beaudry
Houston, Texas 77035

Donald D. Weaver
P. O. Drawer V
Simonton, Texas 77476

Connie Wilson
11427 Oak Spring
Houston, Texas 77043


J. Gregory Copeland

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