

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY & LICENSING BOARD

January 23, 1981

In the Matter of:

HOUSTON LIGHTING & POWER CO.
(Allens Creek Nuclear Generating
Station, Unit 1)

Docket No. 80-466 CP

INTERVENOR DOHERTY'S MOTION FOR A RULE TO PERMIT INSERTION OF
CROSS EXAMINATION BY ONE OR MORE PARTIES BEFORE A PREVIOUS
CROSS EXAMINING PARTY COMPLETES EXAMINATION OF A WITNESS OR
PANEL OF WITNESSES.

John F. Doherty, Intervenor pro se in the above proceedings
herein files this motion to permit insertion of cross examination
by one or more parties before a previous cross examining
party completes cross examination of a witness or panel of wit-
nesses. This motion is the result of considerable participation
and observation of these evidentiary hearings, plus consultation
with several intervening parties who have participated thus far.
It appears to offer advantages to all parties, and the progress
of the hearings. Intervenor has filed it to Washington D. C.
so that all parties and the Board may have an opportunity to
consider its merits away from the pressures of the hearing room.

Current Procedure

The present rules permit panels of witnesses on several
contentions to appear simultaneously. Intervenor are last to
question with Staff or Applicant questioning before them. Each
intervenor is then required* to deliver his full set of questions
on all contentions to the witnesses on the panel. Thus, this
Intervenor questioned a panel of three Applicant expert witnesses
covering four contentions.

However, the most difficult aspect of the rule is not the
lengthiness required for cross examination at a single stretch,
but rather that a unique burden of unproductive attendance is
placed on a second intervenor waiting for the first to finish.
It is difficult for both cross examining intervenor and inter-
venor-in-waiting to guess the length of a particular cross
examination. The content of witness answers and rulings on

*An exception was granted on 1/20/81, where an Intervenor was granted
entry at a point where the cross examiner had completed one of a three
witness panel, for good cause, and on the assumption the Intervenor
granted the exception would be able to continue his cross examination
1/21/81. However, none of the three panelists were available
for the Intervenor granted the exception the following day.

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on suitability of questions from the Board are and certainly will continue to be frequently factors in determining the length of such periods.

The great practical difficulty has come when Intervenor "A" must complete all his cross examination before Intervenor "B" may begin. Intervenor "B" is forced to guess correctly when he should appear and incur "waiver" of participation should he arrive late. The practical outcome of this rule is to invite human frailty to temptation to emerge to the loss of hearing time and productivity.

To illustrate this drawback, suppose all Intervenors have finished cross examination but Intervenor Z who believes in good faith witness will be available to him at 3:00 P.M. Following an answer from witness which to Intervenor Y's surprise makes any further questions from him unnecessary at 2:15, Intervenor Y sees the danger to Intervenor Z of "waiving" cross examination. As a person with sentiments similar to Intervenor Z, does not the current rule strongly tempt Intervenor Y to prevent loss of Intervenor Z's right to cross examine? And, certainly Intervenor Y is somewhat unlikely to state the nature of the situation, even though the Board might use a 45 minute space for other related matters. Illnesses and delays in transportation may well compound such difficulties in the future. Suspensions arise (Tr. 3326) when an Intervenor arrives at an opportune moment and the atmosphere becomes less pleasant for the Board's work. Probably this frustrates witnesses also.

The Motion

Intervenor hereby moves the Board grant parties the right (subject to prohibition ~~for~~ abuse) to begin cross examination of a witness or witness panel although the proceeding cross examiner has not completed his examination.

Discussion

Note that this would permit Intervenors to stand aside at the request of Applicant or Staff cross examiners. The motion is to alleviate the undesirable effects of the current procedures as presented above.

In addition, the Motion would tend to equalize the opposing views procedurally. This is desirable, particularly between Applicant and Intervenor, who are the most clearly defined rivals in this proceeding. Applicant with several paid counsel, and having largely made its case through its pre-hearing filings, has no burdens that require its counsel to wait through periods of uncertain length, uncompensated. This contrasts with an Intervenor who risks unremunerated wait unless the Board grants this right. Such waits are likely to result in dislocated or uncertain activities for an Intervenor on the following day as well. The Intervenor pro se include two attorneys, two graduate engineers, a law graduate, and a physician. It is not that these persons have serious obligations, alone, but also that the current procedure reaps little benefit unless a party unwillingly loses cross examination rights. Otherwise the total cross examination time would not be changed. Moreover, the above has indicated ways in which the current requirement may slow down or burden the proceedings with frustration.

Finally, this Intervenor believes the rule chills the participation of the public by not permitting a measure which would reduce the cost to intervenors to participate with benefit to the hearings progress as well. Surely, public participation through the intervention process is not to be discouraged in a decision likely to effect the lifetime of the Houston participants.

Respectfully,

John F. Doherty
John F. Doherty
Intervenor pro-se

CERTIFICATE OF SERVICE

Copies of "INTERVENOR DOHERTY'S MOTION FOR A RULE TO PERMIT INSERTION OF CROSS EXAMINATION BY ONE OR MORE PARTIES BEFORE A PREVIOUS CROSS EXAMINING PARTY COMPLETES EXAMINATION OF A WITNESS OR PANEL OF WITNESSES" were served via First Class U. S. Postal Service, this 23rd of January, 1981, from Houston, Texas, to the parties and persons below:

Sheldon J. Wolfe, Esq. Chairman, Gustave A. Linenberger, Dr. E. Leonard Cheatum, Administrative Judges.

Richard A. Black, Esq. (Staff)

J. Gregory Copeland, Esq. and Jack R. Newman, Esq. (Applicant)

Susan Plettman, Esq (Texas) & The Several Intervening Parties