

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

May 24, 1982

BEFORE THE ATOMIC SAFETY & LICENSING BOARD

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In the Matter of:
HOUSTON LIGHTING & POWER CO.
(Allens Creek Nuclear Gen-
erating Station, Unit 1)

Docket No. 50-466 CP

INTERVENOR DOHERTY'S REPLY TO APPLICANT'S MOTION TO STRIKE
DOHERTY CONTENTION 58

On April 22, 1982, this Intervenor filed a contention in this proceeding styled, "Intervenor Doherty's Contention 58, Applicant's Conduct on Reporting Violations at STNP (Motion)". In May, Applicant and Staff responded, and this Intervenor replied on May 14, 1982, only to Applicant. Applicant filed a two page motion on May 19, 1982, which arrived at this Intervenor's address on May 24, 1982. In it's May 19, 1982 Motion, Applicant would have the Board strike this Intervenor's reply because the word "Motion" appears in parentheses in the style of the April 22, 1982 contention filing, and in the style and a single instance in the introductory paragraph (Page 1) of this Intervenor's May 14, 1982 reply filing. Applicant would have the Board strike the reply of May 14, 1982, and evidently treat the Contention 58 under the rules regarding Motions instead of those regarding Contentions.

The difficulty with this position is that the controlling Intervenor filing is clearly a contention, as can be seen by reading it. On page one of the April 22, 1982, filing it states "This Contention is in two parts." In addition, as Applicant points out in its filing of May 7, 1982, (p. 2) that the filing did not address the requirement for reopening the record. The reason it did not was because it was not a motion to reopen the record, although it is difficult to see how this contention can be heard without doing so.

Further on, in its treatment of this Intervenor's filing of April 22, 1982, Applicant dealt with the points of the contention, as if it were a contention. That is, by dealing with the April 22, 1982, as if it were a contention, Applicant cannot have its druthers, and ask this be treated as

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as a Motion, and be subject to 10 CFR 2.730(c) rules. In any case, Applicant has treated the April 22, 1982 filing as it would any contention, and placed great emphasis on the appearance of the word "(Motion)" in the style. Applicant has not alleged there is any advantage this Intervenor has gained by placing the word there.

This Intervenor placed the word there because he believed that the circumstances made it strange to style this as just another contention. Applicant would have the Board seize on this error and not permit an important clarification of a Contention asserting the Applicant did not notify the NRC of the potential significance of findings in a report on a nuclear plant for which it is the construction licensee. Yet, Applicant has not even asserted it was in any way bothered by the appearance of the word "(Motion)" in its filing of May 7, 1982. That is, it left out nothing in its May 7, 1982, response because of the word.

Since the Applicant treated this Intervenor's April 22, 1982, as a Contention, it follows that it cannot on May 19, 1982, file a "Motion to Strike" this Intervenor's May 14, 1982 Reply, because the rules we have followed in this proceeding have been that Intervenor's would file Contentions, Staff and Applicant would reply, and Intervenor's would either orally or in written form be permitted a final statement including amendment of the Contention. That is, there has never (to this Intervenor's knowledge) been a fourth salvo, as it were.

Hence, this Intervenor would argue that Applicant stretches mightily to convert the Doherty filing of April 22, 1982 into a motion, and that the subsequent May 14, 1982 filing of this Intervenor since it is based on the Contention 58, could not change a contention into a Motion such that it would cannibalize itself under 10 CFR 2.730(c).

The better procedure is to take this Intervenor's two filing's as contention related which is what they appear

to be from familiarity with other contention filings in this proceeding. Applicant would have the Board elevate a mole hill to a mountain in its May 19, 1982, Motion, as a way of possibly not considering the issues raised by this Intervenor. But, it has not shown that the appearance of "(MOTION)" in the style of this Intervenor's April 22, 1982 filing prejudiced it in any way.

Respectfully,

John F. Doherty, Jr.
John F. Doherty

jfd

Intervenor pro se

I certify that copies of "INTERVENOR DOHERTY'S REPLY TO APPLICANT'S MOTION TO STRIKE DOHERTY CONTENTION 58" were served on the parties below via First Class U. S. Postal Service, this 24th of May, 1982.

Sheldon J. Wolfe, Esq.	Administrative Judge
Gustave A. Linenberger	Administrative Judge
Dr. E. Leonard Cheatum	Administrative Judge
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The Several Intervening Parties	
Atomic Safety Licensing & Appeal Board (ASLAB)	
Docketing & Service Branch	

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