

12/11/78

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOUSTON LIGHTING & POWER COMPANY

(Allens Creek Nuclear Generating  
Station, Unit 1)

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Docket No. 50-466

NRC STAFF'S RESPONSE TO "ARMADILLO COALITION OF TEXAS (HOUSTON)  
& JOHN F. DOHERTY'S (AS AN INDIVIDUAL) AMENDMENT TO CONTENTION #1,  
AND REQUEST FOR ADMISSION OF THE AMENDMENT UNDER 10 CFR 2.758 (b)"

The NRC Staff opposes the request for admission of Contention #1 of the Armadillo Coalition and John H. Doherty in amended form filed on November 21, 1978 in the captioned proceeding. The November 21 pleading also includes a request for a waiver of the application of 10 CFR Part 50, Appendix I in this proceeding. The Staff opposes that request as well.

The original statement of Petitioner's Contention #1 is set forth in the "Stipulation Between NRC Staff and John F. Doherty, Individually and on Behalf of the Armadillo Coalition of Texas, Houston Chapter," dated September 29, 1978. Even a cursory perusal of the Stipulation reveals that "amended" Contention #1 is not really an amendment at all but an entirely different issue. Its central thrust is that (1) the Houston area does not comply with the National Ambient Air Quality Standard, and will not do so for five years, and (2) the combination of the

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radioactive effluents emitted from the proposed facility and the air pollutants are more injurious to petitioner's health than the radioactive effluents alone.

Apart from considerations related to a waiver of the regulations, the Staff objects to admission of the contention as an issue in controversy for the following reasons:

- (1) the submission is untimely, since the Board never granted further time for amendment as alleged by the Petitioners (See Tr. 38 -84).
- (2) the Petitioners have failed to address, let alone justify, acceptance of the contention pursuant to the criteria contained in 10 CFR §2.714.
- (3) no basis is provided for the allegation that there will be a synergistic effect of radioactivity from the plant and air pollution.
- (4) although the contention alleges that Houston may be granted a five year extension to comply with national air quality standards, no attempt is made to reconcile that extension with the proposed date for commencement of operation of the plant (1985). It is therefore unclear what potential impact is being alleged.

In addition, the Staff does not believe that the Petitioners have made the showing required by 10 CFR §2.758 to justify Commission involvement in a request to waive application of Appendix I. 10 CFR §2.758 requires that, in order to have a contention which seeks waiver of the application of a regulation considered in an individual proceeding, the petitioner must, at the outset:

- (1) demonstrate that special circumstances with respect to the subject matter of the particular proceedings are such that application of the rule or regulation would not serve the purposes for which the rule was adopted;
- (2) identify the specific aspect of the subject matter of the proceeding as to which application of the regulation would not serve the purposes for which the rule was adopted;
- (3) set forth with particularity the special circumstances alleged to justify the waiver;
- (4) constitute a prima facie showing that application of the rule would not serve the purpose for which it was adopted.



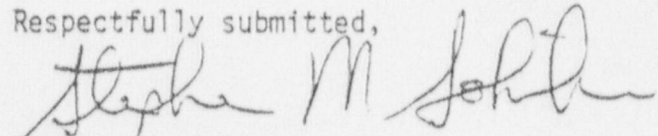
Petitioners allege that Houston is already overburdened with air pollution and it may "reasonably be expected to receive a portion of the burden of radioactive isotopes emitted from the plant in normal operation." They go on to allege that "the air pollution situation in Harris County" creates a special circumstance" under 10 CFR §2.758. This challenge to Appendix I to 10 CFR Part 50 should be rejected for several reasons. First, the petitioners state that application of the regulation would not serve the purpose for which the rule was adopted, namely to protect the public from radioactivity. Substantially all of the Commission's regulations have this purpose. Petitioners have made no attempt to discuss the particular purpose for which Appendix I was promulgated or to address specifically whether application of the rule would serve that specific purpose.

Secondly, a claim that "the air pollution situation" is a special circumstance is totally vague. No attempt is made to describe with particularity how the dose limits contained in Appendix I impact "the air pollution situation," except to allege that the combination of the two are "more injurious" than the radiation alone. It is impossible, from reading the petition, to discern the specific basis for the claim of special circumstances. Further, it is important to remember that 10 CFR §2.758(c) requires a finding that a prima facie showing be made with regard to the

petitioner's claims. This requirement clearly contemplates that more must be set forth than required for a contention in the usual sense. In the Staff's view, an initial showing must be made that the special circumstances alleged will in fact exist or occur should the plant be licensed in compliance with the regulations as written. Clearly, no such demonstration has even been attempted, let alone successfully made.

For the reasons set forth above, the filing of the Coalition and Mr. Doherty neither comply with the requirements for the "usual" contention nor meet the more stringent criterion of a prima facie showing which would elevate this matter to the Commission pursuant to §2.758. The request for waiver of Appendix I to 10 CFR Part 50 should be denied, and Contention I should be excluded as an issue in controversy.

Respectfully submitted,



Stephen M. Sohinki  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 11th day of December, 1978