

August 1, 1979

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))	

NRC STAFF RESPONSE TO PETITIONS TO INTERVENE SUBMITTED
BY GREGORY J. KAINER AND J. CLAUDE DEBREMAECKER

By petitions dated July 12 and 13, 1979, Gregory J. Kainer and J. Claude DeBremaecker requested leave to intervene as full parties in this proceeding. For the reasons stated below the NRC Staff opposes admission of Messrs. Kainer and DeBremaecker as impermissible under the provisions of the Commission's most recent supplementary notice of intervention procedures.

After a "Corrected Notice of Intervention Procedures"^{1/} for the Allens Creek Proceeding was published on September 11, 1978, over thirty petitions to intervene were received by the Commission. Among these petitions, filed in response to the notice described above, were petitions from Gregory J. Kainer and Jean Claude DeBremaecker, dated October 10 and October 9, 1978, respectively.

^{1/} The notice limited intervention to issues based on new information or design changes since the partial initial decision of 1975 for Allens Creek.

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All petitioners who responded to the September 11, 1978 notice were advised that they must file at least one valid contention prior to the prehearing conference scheduled for November 17 and 18, 1978. During the prehearing conference held in Houston, Texas, all petitioners who wished to do so were able to clarify their contentions and comment on both Staff and Applicant's responses to the petitions. Both Mr. Kainer (Tr. 545-555) and Mr. DeBremaecker (Tr. 482-485) appeared and commented at the prehearing conference.

By the Board's Memorandum and Order of February 9, 1979, both Mr. Kainer and Mr. DeBremaecker were denied admission as parties to the proceeding for failure to submit at least one litigable contention, although both petitioners were found to have established interest according to 10 CFR §2.714(a)(1) and (2).

Subsequently, on June 18, 1979, a Supplementary Notice of Intervention Procedures (44 F.R. 35062) was published. This notice recited the history of this proceeding, including the opportunity to intervene noticed September 11, 1978; the many petitions filed; and the Board's Order admitting some and denying some petitions. This notice also explained that the Atomic Safety and Licensing Appeal Board had reversed and remanded some rulings of the Board's February 9, 1979 Order which had denied petitions that included only contentions outside the scope of the limitations of the September 11, 1978 notice. Neither Mr. Kainer nor Mr. DeBremaecker were denied admission on this basis. Their contentions were

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found to be legally barred by a federal court decision^{2/} (Mr. DeBremaecker, Memorandum and Order, p. 30) and without basis for litigation (Mr. Kainer, Memorandum and Order, pp. 44-45).

As clearly set out in the recent (June 18) notice, the Board explained that it wished to allow those persons who might have been prevented from filing petitions in response to the September 11, 1978 notice of intervention procedures by the restrictions of that notice, to have an opportunity to intervene without the previous limitations. As stated in the June 18 notice:

Accordingly, any person [other than those persons and organizations which filed petitions for leave to intervene pursuant to the above notices of May 31 and September 11, 1978], who did not file a petition pursuant to those notices because of the restrictions on permissible contentions contained therein, and who wishes to intervene as a party to this proceeding must file a written petition for leave to intervene in accordance with the provisions of 10 CFR 2.714. Such person shall state that he failed to file a petition for leave to intervene pursuant to the Board's notices of May 31 and September 11, 1978, because of the restrictions on permissible contentions contained in those notices.
[Emphasis added.]

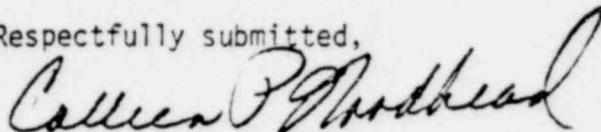
Thus, it is shown that neither petitioner here has a right to intervene in response to the June 18 notice, but on the contrary that they are expressly prohibited from further opportunity to intervene, having exercised their rights previously, but having failed to meet the requirements for admission.

^{2/} Natural Resources Defense Council, Inc. v. NRC, 582 F.2d 166 (1978). This decision affirmed the Commission policy of excluding contentions raising the issue of permanent waste disposal, the subject of Mr. DeBremaecker's contention.

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For the reasons fully set out above, the Staff believes the petitions for intervention filed by Gregory J. Kainer and J. Claude DeBremaecker are impermissible and should be denied as a matter of law.

Respectfully submitted,



Colleen P. Woodhead
Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 1st day of August, 1979.

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