

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 §
No. 1) §

APPLICANT'S RESPONSE TO TEXPIRG'S MOTION
TO COMPEL DISCOVERY

Applicant files this answer to the motion of TexPirg to compel Applicant to respond to certain inquiries contained in TexPirg's Third Interrogatories to HL&P. Applicant raised objections to each of these interrogatories in its responses filed on August 27, 1979.

(A) INTERROGATORY NO. 5. "Need for power."

Applicant objected to this interrogatory on the grounds that the term "need for power" had no clear interpretation in the context of the admitted contentions in this proceeding. TexPirg now replies "that conversation, as described in contention #7, includes the whole issue of need for power by the Applicant's system" and references Section S.8 of the FSFES. TexPirg's claim that the totality of the need for power issue is subsumed in its Contention No. 7 is plainly untenable. Not once in the fourteen

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months that TexPirg has participated in this proceeding has it raised the generic need for power issue prior to this request. In fact, TexPirg has made clear from the beginning that its conservation arguments are directed solely to the alleged potential for displacing the given and established need for one 1200 MW(e) facility. In the "Stipulation Between NRC Staff and Texas PIRG" filed on September 26, 1978, TexPirg declared such a basis for its contention in its statement that:

. . . reduced power production of a one-unit ACNGS vis-a-vis that of the original two-unit proposal can more readily be obviated by the measures outlined above. (p. 10).

This Board then ruled that "Applicant's change in its design plans (i.e., deletion of one unit) militates in favor of hearing evidence upon this issue" Order Ruling Upon Intervention Petitions (February 9, 1979). Hence, it has been clear from the beginning that TexPirg's contention on conservation substitutes is framed within the demonstrated need for one unit of the size proposed for Allens Creek.

Moreover, TexPirg makes the unsubstantiated statement that "Licensing Boards have generally treated conservation contentions as an issue of systematic need for electrical power." This assertion is without any example or citation and, therefore, must be disregarded, particularly in light of the Board's ruling admitting this limited

contention as originally constructed. In summary, TexPirg has not, and cannot, make a case that Contention No. 7 reaches the new limits it now proposes.

(B) INTERROGATORY NO. 6. Limestone County as an alternative site.

TexPirg has inquired as to why a particular site was not evaluated by Applicant as an alternative site for ACNGS. Applicant answered this inquiry as it would for any request stipulating a site other than those specifically examined: all candidate areas excluded were screened out under the criteria contained in Chapter 9 of the Environmental Report. The answer is complete and responsive.

(C) INTERROGATORY NO. 7. Lobbying.

TexPirg's sole claim of relevancy in the requests concerning Applicant's position on certain proposed legislation is the conjecture that it may be "forced to rebut any potential allegations by Applicant that HL&P has, in good faith, and with objectivity, made efforts toward or studied one of the alternatives." The matters inquired into are simply not in issue in this case. The only matters in issue are the technical merits of the proposed energy alternatives. TexPirg does not contend that Applicant's disposition toward this legislation in any way touches on the factual merits. Last, but not least, the courts have consistently shielded corporations from inquiry into their legislative activities for fear of treading on the constitutional

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right of petition. Eg., Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961); United Mine Workers v. Pennington, 381 U.S. 657 (1965).

TexPirg has cited no reason for overriding such protections.

(D) INTERROGATORY NO. 8. CAM correspondence.

In its motion, TexPirg has narrowed its request to correspondence concerning self-generation of power. As reconstructed, Applicant has no objection to this request and will make such correspondence available to TexPirg at the Energy Development Complex.

(E) INTERROGATORY NO. 9. Dow Chemical negotiations.

TexPirg offers two justifications for its request for certain correspondence with Dow Chemical concerning a project that has been identified as neither co-generation nor self-generation (a fact not controverted by TexPirg). First, TexPirg asserts that it relates to the need for power issue. As Applicant has demonstrated previously, there is no such general issue in this proceeding. Second, TexPirg asserts that any forthcoming information "may plausibly relate" to Dow Chemical's future conservation or self-generation plans. As to this point, Applicant will supply any information it has which might bear on Dow's future plans for conservation or self-generation.

(F) INTERROGATORY NO. 10. Dow Project impact.

Applicant objects to this interrogatory for the reasons set out in its objection to Interrogatories Nos. 9 and 5.

(G) INTERROGATORY NO. 11. Electrical demand by customer.

TexPirg has reformed its request sufficiently to allow Applicant to produce the following answer: Exxon Refining; approximately 17%.

(H) INTERROGATORY NO. 12.

Applicant has fully responded to this interrogatory for all purposes. However, Applicant will further oblige TexPirg's request by answering that the barge is expected to move through the Freeport harbor to the Intracoastal Waterway (mile 395), and then to the juncture with the San Bernard River (mile 405).

(I) INTERROGATORY NO. 15. PPIFU exemptions.

Applicant believes that its response to Interrogatory No. 15 can be easily discerned from its response to Interrogatory No. 16. However, in an effort to accommodate TexPirg, Applicant answers that it has no "documents, reports or memoranda on the advisability or feasibility of continuing the lifetime or extended use of natural gas plants through application of exemptions for areas with deteriorated air quality conditions in the Power Plant and Industrial Fuel Use Act of 1978."

(J) INTERROGATORY No. 21. Gulf Coast site.

TexPirg rightly complains that Applicant's response does not correspond with the Section contained in TexPirg's copy of the ER. Evidently, TexPirg's edition of

the ER does not have amendment number four properly entered.
Attached are the correct pages.

(K) INTERROGATORY NO. 25. Underground siting.

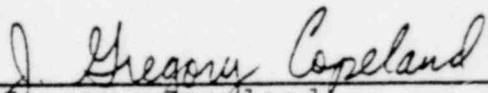
Applicant will only briefly restate its position. Mr. Doherty, Acting Executive Director of TexPirg, withdrew this portion of Contention No. 6 by the "normal" procedure of so advising Applicant's counsel on the record, under oath. (Dep. p. 129). Since Mr. Doherty swore under oath that he was speaking for TexPirg, we assume that TexPirg has dropped this portion of its contention until such time as someone with authority to speak for TexPirg files a sworn statement to the contrary.

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Station, Unit 1) §

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicant's Response to TexPirg's Motion to Compel Discovery in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, or by hand-delivery this 19th day of September, 1979.

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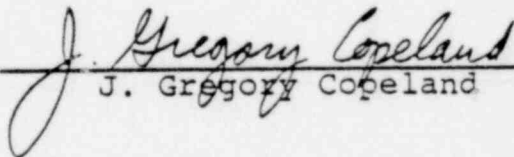
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