

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of  
HOUSTON LIGHTING & POWER CO.  
(Allens Creek Unit 1)

}  
Docket 50-466  
Nov. 26, 1979

TEXPIRG RESPONSE TO HL&P MOTION FOR LEAVE  
TO FILE REPLY AND ALTERNATIVE TEXPIRG REPLY  
TO APPLICANT'S REPLY TO TEXPIRG RESPONSE

TexPIRG is in receipt of a Motion for Leave to File Reply and Reply to TexPIRG Response on Motion for Dismissal of TexPIRG, which are dated November 21, 1979.

TexPIRG objects to the Motion for Leave to File Reply, and urges denial of that motion. In the alternative, TexPIRG urges the Board to accept this document as TexPIRG's reply to the HL&P reply.

Basically, the reply constitutes a re-hash of the points raised in the original Motion for Dismissal of TexPIRG. For that reason, the Board should deny the motion for leave to file that document.

The reply by HL&P is filled with false statements of fact and distortions of reality. The "re-hash" of the events in that document have no doubt led to great confusion on the Board's part in discerning what events have transpired; TexPIRG is intimately involved in the events which have transpired, but finds itself somewhat confused in trying to put together the pieces of the puzzle as put forth by the Applicant. Unfortunately, TexPIRG has neither the time nor resources to explain and respond to each and every distortion by the Applicant at this time. \*/ However, TexPIRG does believe it necessary to clarify the gross misstatements of fact in that reply, if indeed the Board accepts that document.

For that reason, TexPIRG submits the following points in reply, as stated in the following pages.

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\*/ In particular, HL&P's characterizations of what transpired during Mr. Scott's deposition are usually distorted and taken out of context. TexPIRG does not have a copy of that deposition, nor does it have time in the short period allowed for responses to visit Applicant's offices to examine the transcript for the purpose of preparing such clarifying comments. TexPIRG can only hope that the liberties the Applicant has taken with the truth will not have an overly prejudicial effect on the Board.

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REPLIES

1. Applicant attempts to conceal the fact that it knew or should have known that deposing Mr. Johnson was the way to obtain the most complete information, as noted in the footnote on page 11 of TexPIRG response to the Motion to Dismiss, by flatly denying that Mr. Johnson did in fact submit the more responsive interrogatory responses as a result of the July 12 Board Order. Footnote #5 of the Applicant's Reply, page 3, inaccurately states that the "only interrogatories" Mr. Johnson answered were the third set. The Applicant repeats the mis-statement in the final sentence of part II on page 4 of the Reply, with a sentence that is unbelievably deceptive in substance. (Incredibly, the Applicant makes it appear Mr. Scott has been inconsistent by previously swearing that ~~Mr. Scott~~ ~~swore~~ he had responded to the July 12 Order; when the fact is that the order in question required several responses-- one of which Mr. Scott made, the re-submission of previous interrogatory responses, and the other of which Mr. Johnson made, the compiling of more responsive answers to those previous interrogatories). Mr. Johnson duly swore to the document entitled "TexPIRG's Further Responses to Interrogatories as Directed by the Board's Order of July 12, 1979." (Instrument identified in the Appendix to this document). That document provided the most complete responses to what the Board deemed deficient responses in the set of responses to the Applicant's first and second set of interrogatories. In fact, the first response in that document re-answers the very interrogatory which the Applicant attempted to breach with Mr. Scott in the deposition. The Applicant cites an inapplicable phrase from TexPIRG Response to the HL&P Motion at page 4 of its Reply in an attempt to imply that TexPIRG "admits" Mr. Johnson could not answer the question. In fact, the phrase was part of an overall TexPIRG assertion that Mr. Johnson could have re-submitted the first and second set of responses from the standpoint of knowledge of those

issues, but not from the standpoint of complying with the July 12 Order since he was not part of TexPIRG when the responses were originally submitted. The fact that he prepared the July 27 "further responses" with respect to those interrogatories should stand as evidence of his knowledge of the issues involved. So, in actuality, HL&P has no difficulties in obtaining information on those subjects, so long as their object and interest is really obtaining information, rather than trying to set up motions to dismiss.

2. Applicant states that they have tried to depose Mr. Johnson but have been unsuccessful. Applicant is being somewhat deceptive in not explaining the full story. The attempted deposition occurred in the Spring of 1979 when Mr. Johnson was not with TexPIRG, as explained in the footnote on page 8 of TexPIRG's Response to the Motion to Dismiss. Although TexPIRG's counsel did not contact HL&P, TexPIRG did have a representative--Mr. Doherty--contact Applicant to explain the situation, and arrangement was made for Mr. Doherty to represent TexPIRG's staff at that deposition. Since the deposition was addressed to Mr. Johnson who no longer worked at TexPIRG, TexPIRG could have avoided that deposition if it were of the frame of mind inferred by Applicant, but instead TexPIRG chose to provide HL&P a representative to depose. Mr. Johnson, who was advised by legal counsel in Austin, Texas, chose not to attempt quashing the deposition because he had not been personally served with the instrument. Regardless, HL&P knew of Mr. Johnson's return to TexPIRG last summer but did not seek his deposition beyond that time.

3. Despite the fact that TexPIRG has never disavowed Mr. Doherty's deposition or interrogatory responses (as indicated again on page 9 of TexPIRG's Response to the Motion to Dismiss), Applicant continues to state that such disavowal has occurred as if it were a fact. What more positive acceptance of Mr. Doherty's responses to the First Set of Interrogatories could TexPIRG make than re-submitting those responses under affidavit by its attorney?

TexPIRG has never prevented Applicant from interrogating Mr. Doherty concerning his answers to interrogatories, and is at a loss to explain how Applicant arrived at a contrary conclusion on p. 2 of the Reply. As stated previously, TexPIRG will not accept the withdrawal of its contentions until formal pleadings have been so filed by TexPIRG; however, that position does not disavow in any way the substance of Mr. Doherty's responses while he was employed by TexPIRG. It would appear to TexPIRG that the question of whether Mr. Doherty will still subject himself to deposition by Applicant on TexPIRG's contention is up to Mr. Doherty since he is no longer with TexPIRG.

4. Applicant somehow insists that TexPIRG should have presented Mr. Sansam's sworn affidavit to Applicant, simply because Applicant requested TexPIRG to do so. Mr. Scott explained to Mr. Copeland at the time that TexPIRG disagreed with the gratuitous legal advice of HL&P counsel. TexPIRG's counsel may have considered at one time whether or not such an affidavit should be obtained, but, prior to submitting the Responses to the Third Set of Interrogatories, TexPIRG arrived at the conclusion that use of Mr. Sansam's affidavit would not have been

proper.  
SUMMARY

TexPIRG urges the Board to examine TexPIRG's Response to HL&P's Motion to Dismiss for a full exposition of TexPIRG's position. TexPIRG remains somewhat stunned that Applicant raises its so-called problems with respect to the July 12 Order some five months following the issuance of that order, without mentioning a word of those problems in an intervening time period (including a pre-hearing conference where all parties were present). Hopefully, Applicant's counsel will attempt to communicate and work with TexPIRG's counsel when such problems arise at any other time.

Respectfully,

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JAMES SCOTT, JR.

I, James Scott, herein certify that the attached document has been served upon the following on or before Nov. 27, 1979 by service in the U.S. Mail System.

J. Gregory Copeland, Sheldon Wolfe, EL Cheatum, Gustave Linenberger, R. Lowerre, ASLAB, Steve Schinki, John Doherty, Carro Hinderstein, B. McCorkle, D. Marrack, W. Rentfro.

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APPENDIX

Attached find the front and final pages of "TexPIRG's Further Responses to Interrogatories As Directed By the Board's Order of July 12, 1979."

The full document is, of course, 14 pages long. However, TexPIRG has reproduced only those pages in order to properly identify the document. Financial constraints prevent reproduction of the full instrument.

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U.S. NUCLEAR REGULATORY COMMISSION  
Before the Atomic Safety & Licensing Board

In the Matter of  
HOUSTON LIGHTING AND POWER CO.  
(ALLEN' CREEK UNIT 1)

I Docket #50-466  
I

TEXPIRG'S FURTHER RESPONSES TO INTERROGATORIES AS  
DIRECTED BY THE BOARD'S ORDER OF JULY 12, 1979

I.

On July 12, 1979, the Licensing Board entered an order in this proceeding relating to the substantive content of interrogatory replies proffered by TexPIRG, an intervenor in the proceeding.

In compliance with the Order, TexPIRG submits the following supplemental responses to Applicant's interrogatories, referenced by the numerical citing contained in that order.

II.

1. (Re: Site suitability comparison)

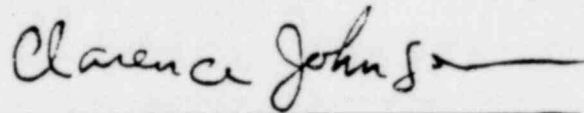
TexPIRG points out the following damages and deficiencies in the present siting proposal:

(a.) SAFETY. Both STP and ACNGS will emit radiation; and though compliance with technical regulations may be achieved, a radioactive residual risk remains inherent in the operation of the plants. Whatever the risk of latent health effects, and the particular vulnerabilities of segments of the population, the size of the potential health damages from that risk is a function of population exposure.

Class 9 accidents, and lower design basis accidents, can result in the release of radiation in amounts larger than planned. (The experience of Three Mile Island Power Plant illustrates this possibility) The latent health effects possible from design basis accidents increase with population exposure; and the dimensions of a Class 9 "disaster" have been drastically reduced with lower population exposure. Certainly, lower population exposures and accompanying reduced infrastructure problems, lessen the difficulties

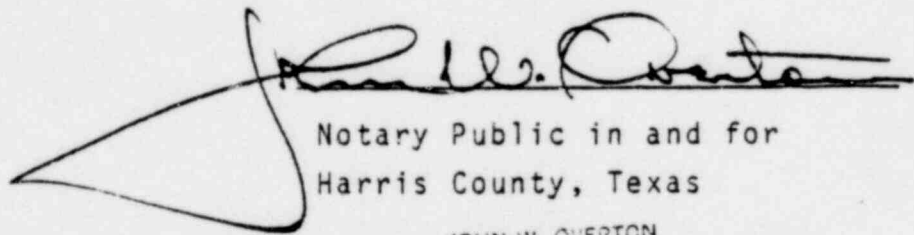
State of Texas )  
County of Harris )

BEFORE ME, THE UNDERSIGNED AUTHORITY, on this day personally appeared Clarence Johnson, who upon his oath stated that he has answered the foregoing TexPIRG's Response to Houston Lighting & Power Company's Interrogatories to TexPIRG in his capacity as Executive Director for TexPIRG, and all statements contained therein are true and correct.



Clarence Johnson

SUBSCRIBED AND SWORN TO BEFORE ME by the said Clarence Johnson, on this 27<sup>th</sup> day of July, 1979.



Notary Public in and for  
Harris County, Texas

JOHN W. OVERTON  
Notary Public in and for Harris County, Texas  
My Commission Expires January 31, 1981.  
Bonded by Alexander Lovell, Lawyers Surety Corp.

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