

June 5, 1979

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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))

Docket No. 50-466



NRC STAFF RESPONSE TO ADDITIONAL CONTENTIONS OF TEXPIRG

On May 12, 1979, TEXPIRG, an Intervenor in the captioned proceeding, filed additional contentions which it seeks admitted as issues in controversy pursuant to this Board's Order of April 12, 1979. Set forth below are the Staff's responses, seriatim, to the additional contentions proffered by TEXPIRG.

Contention 1(1)

TEXPIRG contends that the FES supplement in this proceeding is inadequate because it fails to address the environmental impacts associated with the construction of four units at the Allens Creek site. However, the application currently before the Commission is for one unit only; should the Applicant choose to construct additional units at a future time, the impacts of construction of those units would have to be addressed in a separate environmental statement or statements. To the extent that TEXPIRG alleges that the Staff must prepare a programmatic

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impact statement addressing the impacts from four units at the Allens Creek site, no such impact statement is required since there has been no proposal for Federal agency action relating to construction of four units. See Kleppe v. Sierra Club, 427 U.S. 390 (1976). Therefore, this contention should be rejected by the Board.

Contention 1(2)

TEXPIRG asserts that in order to have an adequate alternative site analysis pursuant to Section 102(2)(c) and (e) of NEPA, the Staff must address the impacts on the Houston area from a core melt and steam explosion at other sites and impacts associated with transportation of the pressure vessel to each of the alternative sites. This contention should be rejected by the Board for several reasons. First, TEXPIRG offers no support for its assertion that a full accident analysis and discussion of impacts of reactor vessel transportation are required in an alternative site analysis. That level of detail is simply not mandated as a matter of course in performing alternative site inquiries, unless there will be major impact arising in such areas. Indeed, the Commission recognized in the Seabrook proceeding that it cannot be expected that the same level of detailed information would be developed for alternative sites as would be available for a proposed site.^{1/} In effect, TEXPIRG asserts that the information developed for each of the alternative sites analyzed by the Staff should be as complete as that developed for the Allens Creek site. Such a requirement would negate the "rule of reason" to which environmental analyses are subject pursuant to NEPA.^{2/}

^{1/} Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503 (1977).

^{2/} Natural Resources Defense Council, et al., v. Morton, 458 F.2d 827 (D.C. Cir. 1972).

Secondly, in performing its alternative site review for the Allens Creek facility, the Staff has examined all major areas which could cause substantial changes in the environmental impact of the facility, such as hydrology, meteorology, seismology, etc. No showing is made that transportation of the reactor vessel or analysis of credible accidents would change the environmental comparisons made. Moreover, TEXPIRG has not alleged that an examination of the impacts of reactor vessel transportation or accidents would demonstrate that any alternative site is obviously superior to the proposed site.^{3/}

Thirdly, since Allens Creek is a land-based facility, the Appeal Board has made clear that core melt accidents need not be addressed absent a showing that for the reactor in question such an event is credible.^{4/}

Finally, since the contention deals with alleged defects in the Staff's final supplement to the FES in this proceeding, which was published in August, 1978, it appears that this matter could have been raised under the provisions of this Board's September 1, 1978 "Corrected Notice of Intervention Procedures" (43 F.R. 40328) (hereinafter September 1 Order). Since this Board's order of April 12, 1979, invited contentions to be filed solely with regard to matters that could not have been raised under the September 1 Order, this contention should be rejected on the additional ground that it does not comply with the criteria set forth in the April 12, 1979 Order.

^{3/} See footnote 1.

^{4/} Offshore Power Systems (Floating Nuclear Power Plants), ALAB-489, 8 NRC 194 (1978).

Contention 1(3)

TEXPIRG asserts that until all questions are answered with regard to each and every environmental impact associated with the proposed facility, construction cannot go forward. This contention should be rejected by the Board since the Courts have never required that all questions concerning the environmental impacts of a proposed project need to be answered before agency action can be taken. In fact Courts have uniformly held that environmental impact statements require only that the best information reasonably available be analyzed in an EIS. As the Court stated in State of Alaska v. Andrus, 580 F.2d 465 (D. C. Cir. 1978):

Certainly, NEPA cannot be "read as a requirement that complete information concerning the environmental impact of a project must be obtained before agency action may be taken. If we were to impose a requirement that an impact statement can never be prepared until all relevant environmental effects were known, it is doubtful that any project could ever be initiated." (cite omitted).

Further, TEXPIRG fails to challenge any of the Staff's conclusions in this contention with regard to the specific environmental impacts which it mentions, namely, chlorine discharges, affects of heavy metals or ability of game fish to survive in the cooling lake. The Staff notes that all of these are specifically covered by issues admitted in controversy by this Board. See "Ordering Upon Intervention Petitions" dated February 9, 1979, p. 4. Therefore, the contention should be rejected as lacking both specificity and basis as required by 10 CFR §2.714.

Contention 2

TEXPIRG alleges that the alternative of using natural gas instead of construction of the Allens Creek facility has not been adequately considered. In support of its contention TEXPIRG makes mention of various possibilities for deregulation and lifting of restrictions on the use of natural gas for boiler fuel. It asserts that Houston Lighting and Power will use natural gas "if artificial restrictions on its use and price are lifted as they now seem to be."

This contention should be rejected for two reasons. First, TEXPIRG does not allege that the federal policy against using natural gas as a boiler fuel has been changed and does not challenge the Staff's conclusions in §S.9.1.2.1 of the FES supplement that future prices are expected to be too high for natural gas to be a viable fuel for a 1200 megawatt base load power station. Secondly, the Licensing Board's order of April 12, 1979, invited the filing of new contentions solely on the basis that the contentions would have been submitted but for the restriction in the September 7 Order. Contentions regarding recent developments in policies relating to natural gas could have been raised and were raised by at least one petitioner^{5/} in response to that Order. Therefore, pursuant to the Board's April 12 Order, this contention cannot now be raised.

^{5/} See supplement to Petition to Intervene filed by Ann Wharton dated November 2, 1978.

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Contention 3

TEXPIRG contends that game fish will not be able to live and propagate in the Allens Creek cooling lake in sufficient quantities to provide reasonable sport fishing because the Staff has failed to take into account the vertical distribution of water temperature in the cooling lake. The crux of this contention is that the cooling lake will be too hot for game fish to live.

Since the design of the cooling lake was changed in several respects as a result of the change from two units to one, this contention appears to be based upon the current proposed design. Therefore, pursuant to the criterion in the Board's April 12, 1979 Order, the contention must be rejected since it could have been raised under the provisions of the September 1 Order. In any case, in its February 9 "Order Ruling Upon Intervention Petitions, in response to TEXPIRG Contention 2 dealing with the same subject, i.e., effects of temperature on survival of fish, this Board expressly stated that (pp. 4-5) it had discussed the effects of temperature on fish in its Partial Initial Decision (hereafter PID), 2 NRC 775 in findings 39, 40 and 41, and that "in our judgment the change in temperature regimes described in the new design is insufficient to disturb these findings."

Contention 4

This contention deals with water quality matters pursuant to the Federal Water Pollution Control Act and it appears that TEXPIRG is alleging that the Environmental Protection Agency has not properly applied that statute to the situation

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at Allens Creek and that the NRC should take more stringent water quality steps than EPA is willing to take. However, the NRC has no regulatory jurisdiction pursuant to the Federal Water Pollution Control Act over water quality matters and can impose no different standards pursuant to that Act than has EPA.^{6/} Therefore, the contention should be excluded as a matter in controversy.

Contention 5

TEXPIRG alleges that the Allens Creek construction permit proceeding may not go forth until the Texas Public Utilities Commission has issued a certificate of necessity and convenience for the construction of the plant. The Appeal Board has had occasion to deal with the question of whether NRC proceedings may go forward in the absence of required state permits. Thus, in the San Onofre proceeding the Appeal Board stated:

And we can readily agree that it would be productive of little more than untoward delay were reach regulatory agency to stay its hand simply because of the contingency that one of the others might eventually choose to withhold the necessary permit or approval. ^{7/}

Indeed the Commission itself, in the Koshoyonong proceeding made its position clear with regard to matters such as that raised by TEXPIRG:

As a general rule, it is the practice of the Commission to pursue its administrative procedures while others stayed in local proceedings are under way. Such a

^{6/} See Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978).

^{7/} Southern California Edison Company, et al. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-171, 7 AEC 37, 39 (1974).

practice is hardly a waste of time; on the contrary, it is efficient, economical and an expeditious course (citing San Onofre). 8/

Therefore, this contention should be excluded as a matter in controversy.

Contention 6

This contention amounts to an assertion that energy conservation could at some time in the future reduce energy consumption by 40 percent and that therefore the Allens Creek facility should not be built. This contention should be rejected by the Board for two reasons. First, the Staff has evaluated the need for the Allens Creek nuclear plant in detail in §S.8 of the Final Supplement to the FES in this proceeding. TEXPIRG's motion does not indicate any specific weaknesses in the Staff analysis with regard to need for power or potential for conservation. Therefore, the contention lacks the statement of basis required by 10 CFR §2.714. Further, in order to have a legally sufficient contention with regard to any alternative to a nuclear generating station an intervenor must at least allege that the alternative is available in the time frame needed, i.e., that its allegations concerning that alternative are not remote and speculative. As the Appeal Board has recently stated:

8/ Wisconsin Electric Power Company, et al. (Koshkonong Nuclear Power Plant, Units 1 and 2) CLI-74-45, 8 AEC 928 (1974).

The Supreme Court has embraced the doctrine, first enunciated in Natural Resources Defense Council v. Morton, 458 F.2d 827, 837-38 (D.C. Cir. 1972), that environmental impact statements need not discuss the environmental effects of alternatives which are "deemed only remote and speculative possibilities." Vermont Yankee Nuclear Power Corporation v. Natural Resources Defense Council, 435 U.S. 519, 551 (1978). 9/

The contention proffered by TEXPIRG is entirely remote and speculative and therefore should not be admitted as an issue in controversy. Further, as the Appeal Board reaffirmed in the Seabrook proceeding:

Where applicable the "threshold test" requires that an intervenor make a preliminary, affirmative showing respecting the asserted alternative which . . . is "sufficient to require reasonable minds to inquire further." (cite omitted) 10/

TEXPIRG's averment that energy conservation could reduce energy consumption by 40 percent in the future hardly complies with the requirements of 10 CFR §2.714 (that the basis of the contention be stated with reasonable particularity) .et alone presents information which would require reasonable minds to inquire further. The contention should therefore be excluded.

9/ Public Service Electric and Gas Co., et al. (Hope Creek Generating Station, Units 1 and 2) ALAB-518, ___ NRC ___, Docket Nos. 50-354, 50-355 (January 12, 1979) Slip op. at 51.

10/ See Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-471, 7 NRC 477 (1978). The threshold test requirement had been upheld by the United States Supreme Court in Vermont Yankee v. NRDC, 435 U.S. 519 (1978).

Contention 7

TEXPIRG alleges that both natural draft and mechanical draft cooling towers are superior alternatives to the cooling lake proposed by the Applicant but states that this contention based upon new evidence and changes in plant design.

Therefore, by TEXPIRG's own admission it could have been raised even under the terms of the September 1, 1979 notice and therefore should be excluded now since the only contentions which this Board's April 12, 1979 Order invited were those which would have been filed but for the restrictions in the September 1, 1978 notice. This contention is therefore not in compliance with the April 12 Order and should be excluded. Further, the matter of cooling system alternatives was dealt with by the Board in the PID; 2 NRC at 792-793 and it concluded that the cooling lake was the "preferred alternative." TEXPIRG has provided no information which warrants reopening the earlier determination.

Contention 8

TEXPIRG alleges that the alternative energy sources of natural gas, coal, lignite and oil are all environmental and economically superior to nuclear power. There are five subparts to the contention.

In subpart a TEXPIRG alleges that all of the listed alternatives are more available than uranium which is allegedly mined largely outside the United States. Even if that statement were true, however, the fact that it is more difficult to

acquire uranium is irrelevant to the issue of environmental preferability. While it might cost more to transport uranium mined outside the United States to the United States, the Appeal Board has made clear in the Midland decision^{11/} that the cost of an alternative need not be discussed until it is determined that the alternative is environmentally preferable.

In subpart b of the contention, TEXPIRG alleges that there is only about 20 years' supply of uranium and that impliedly there will not be sufficient uranium in order to fuel the Allens Creek facility for its intended lifetime. However, TEXPIRG has failed to state a basis for the assertion that only 20 years of uranium supply remain, as required by 10 CFR §2.714.

In subpart c TEXPIRG asserts that the cost of the equipment necessary to make nuclear power safe makes nuclear power more expensive than the listed alternatives. For the reasons developed by the Appeal Board in the Midland decision, supra, TEXPIRG has not demonstrated that the economic cost of nuclear versus the other alternatives listed by TEXPIRG need be litigated in this proceeding.

In subpart d of the contention, TEXPIRG offers what appears to be a rhetorical statement regarding the lessons learned from the recent Three Mile Island incident with regard to impacts of large accidents. The Staff has made an assessment of radiological accidents and their environmental impacts in Section S.7 of the Final Supplement to the FES and TEXPIRG has alleged nothing which would provide a basis to believe that the assessment is in error.

^{11/} Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155 (1978).

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In subpart e of this contention, TEXPIRG refers to the recent criticism of WASH-1400 by the Lewis Committee and asserts that the probability of occurrence of large accidents is uncertain. First, the statement is not a contention, and secondly, there is no showing that the Staff relied on WASH-1400 in performing any of its accident analysis with regard to the Allens Creek facility. In any case, in response to TEXPIRG Additional Contention 5 dealing with the same issue, this Board has already ruled in its February 9 Order that the matter of Staff reliance on WASH-1400 in its accident analysis will be examined in this proceeding.

Further, this contention is defective because no allegation has been made that the alternatives which TEXPIRG lists are viable substitute energy sources for a new base load steam electric plant, and NEPA does not require the analysis of alternatives which are "deemed only remote and speculative possibilities."^{12/} TEXPIRG must, as a threshold matter, provide some basis to believe that the alternatives it suggests are viable options in the time frame of interest.^{13/} Finally, to the extent that TEXPIRG is alleging that the Staff's analysis of coal (which includes lignite) versus nuclear health effects in FES supplement, Section S.D.2 is in error, there is no basis stated for such an allegation and no indication in the contention which would alert the Staff to the errors alleged in that analysis. As the Supreme Court made clear in the Vermont Yankee decision:

^{12/} Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 551 (1978).

^{13/} Id., The "threshold test" specifically upheld by the Supreme Court.

[w]hile it is true that NEPA places upon an agency the obligation to consider every significant aspect of the environmental impact of the proposed action, it is still incumbent upon intervenors who wish to participate to structure their participation so that it is meaningful, so that it alerts the agency to the intervenors' position and contentions. ^{14/}

Contention 9

This contention was previously submitted by TEXPIRG in substantially the same form as TEXPIRG Additional Contention 2 involving compliance by the Applicant with 40 CFR 190. The Board ruling denying the admission of that contention applies equally here.^{15/} Obviously, since TEXPIRG previously submitted this contention, it did not forebear from doing so because of the restrictions imposed would be petitioners in the Board's September 1 Order. Therefore, the contention should not be admitted as an issue in controversy.

Contention 10

TEXPIRG alleges for various reasons that the Applicant cannot meet the regulations contained in 10 CFR Part 50, Appendix E and 10 CFR Part 100. However, the contention is totally vague and, as discussed below, misrepresents entirely what is required by the regulations. The contention contains eight subsections, none of which explain why the Applicant does not meet the regulations cited by TEXPIRG.

^{14/} Id., at 552.

^{15/} See "Order Ruling on Intervention Petitions," dated February 9, 1979, pp. 10-12.

In subpart a TEXPIRG alleges that the regulations cannot be met because the reactor proposed for the Allens Creek site is much larger than those considered when the regulations were made. However, there are no regulatory specifications or restrictions on the size of reactors and the regulations apply regardless of the size. To the extent that TEXPIRG is alleging that the regulations are insufficient to protect the health and safety of the public this is a challenge to Appendix E and 10 CFR Part 100 without any demonstration pursuant to 10 CFR §2.758 that special circumstances exist which would allow such a challenge.

In subpart b, TEXPIRG alleges that the reactor is of a new untried, untested design and that there is no operating experience to show how safe it is. Once again, TEXPIRG does not explain how such a statement demonstrates that the Applicant cannot meet the cited regulations. Further, the Commission's regulations allow the licensing of new designs and TEXPIRG points to no regulation which would prohibit licensing of a design such as that proposed for Allens Creek. To the extent that TEXPIRG alleges that the regulations are inadequate in this regard, such a challenge is prohibited pursuant to 10 CFR §2.758 absent a showing, not made here, of special circumstances.

Subpart c of the contention states that the plant is expected to normally release much more radiation than most plants. However, there is no regulatory requirement that the releases from the Allens Creek facility be as low as any other plant. What the Applicant must meet are the dose limits contained in 10 CFR Parts 20 and Appendix I to 10 CFR Part 50. Again, the statement in this subpart does not support

TEXPIRG's allegation that the Applicant cannot meet the requirements of 10 CFR Part 50, Appendix E and/or 10 CFR Part 100.

Subpart d of the contention states that the Houston area is the fastest growing area of the country and that at the later stages of plant life the population around the plant will be more than 500 people per square mile. As with every other subpart of this contention, that statement does not support TEXPIRG's allegation that the Applicant will not meet the regulations, nor is there any regulatory requirement that population density be less than 500 persons per square mile at the end of plant life.

Subpart e of the contention alleges that the traffic is so heavy in Houston that it would be impossible to evacuate a majority of the people that could be expected to be affected by the maximum design basis accident. There are several defects with this allegation. First, TEXPIRG provides no basis for the assertion that anyone would have to be evacuated as a result of the maximum design basis accident. Indeed, one of the purposes of the regulatory scheme in 10 CFR Part 100 which establishes the exclusion radius, low population zone, and population center distances is to make evacuation unnecessary as a result of design basis accidents. TEXPIRG has not provided a basis for the implication that anyone, let alone citizens of Houston 45 miles away from the plant, would have to evacuate as a result of any design basis accident.

Subpart f of the contention asserts that the state of Texas does not have an NRC approved evacuation plan. However, the NRC does not currently approve state evacuation plans in conjunction with licensing proceedings, nor is such approval required

by Appendix by Appendix E to 10 CFR Part 50. Indeed, under the current regulations in Appendix E, detailed plans to cope with emergencies need not be presented to the Commission at all until the operating license stage. Therefore, the Staff does not believe that the lack of an NRC approved state evacuation plan creates a litigable issue at present. However, if as a result of the Three Mile Island incident or other regulatory developments the Commission's policy with regard to approval of evacuation plans change, the Staff will of course implement any new Commission policy in conjunction with this proceeding and reconsider its position herein, if appropriate.

Subparts g and h of the contention have to do with so-called "fallout" resulting from radioactivity concentrated in rain clouds. TEXPIRG alleges that because the rain caused "fallout" the exclusion area and low population zones are not large enough to meet NRC requirements. There is absolutely no basis for that assertion provided by TEXPIRG, which is totally speculative. Indeed this Board, in the PID (2 NRC 775 at 797-798), dealt with the propriety of the exclusion area, low population zone and population center, and TEXPIRG has provided no new information which would warrant the reconsideration of those findings. Further, TEXPIRG offers no basis for its assertion that the alleged rain caused "fallout" renders the Applicant unable to comply with either 10 CFR Part 50, Appendix E or 10 CFR Part 100.

Finally, subpart i of the contention states that because of the very large Houston population now and the much larger one projected for 2020, population distance

should be much more than the 1-1/3 times low population zone normally used. However, paragraph 82 of this Board's PID (2 NRC 775, 798) this Board found that since Houston is sufficiently distant from the proposed facility "no special considerations contemplated by 10 CFR §100.11(a)(3) need to be given to distance from that population center." Thus the Board ruled that the population center and population center distance were correctly chosen. No new information has been suggested by TEXPIRG which would require a reconsideration of the Board's finding cited above.

For all of the reasons given above, this contention should be rejected by the Board.

Contention 11

TEXPIRG asserts that the Applicant cannot devise a plan to protect the public's health against either internal or external sabotage to the Allens Creek facility and in support of the contention points to recent incidents at the Surry plant and in Argentina and France. However, TEXPIRG fails to explain in what manner those incidents demonstrate that it is not feasible to implement the security provisions required by 10 CFR §73.55. Further, to the extent that TEXPIRG is alleging that detailed plans should now be formulated by the Applicant for protection against sabotage this Board has already stated in its February 9 Order (pp. 13-14) that the Applicant for a construction permit is not required to consider or specify the exact measures which will be taken for safeguarding the plant against acts of sabotage. Therefore, this contention should be rejected by the Board.

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Contention 12

TEXPIRG asserts that the NRC cannot protect the public health and safety or the environment if it limits its consideration of accidents to "the design basis accidents" which has considered in the past. TEXPIRG asserts that this is true because of incidents such as that at Three Mile Island. However, the contention fails to alert the Board, the Staff or the Applicant to what specific accidents the TEXPIRG asserts should be analyzed or the basis for the assertion that any specific accidents other than those already analyzed should be discussed. In addition, TEXPIRG fails to relate any of the accidents which it cites in the contention to the Allens Creek design and even fails to assert that the Allens Creek design renders the facility susceptible to accidents the likes of which it mentions in the contention. Thus, the contention is defective on grounds of both specificity and lack of basis and should be denied by the Board. To the extent that TEXPIRG asserts that the Staff's analysis of plant accidents should go beyond that required by the proposed annex A to Appendix D, 10 CFR Part 50, the Appeal Board has ruled in the Offshore Power Systems proceeding that with respect to land based plants the Staff and Applicants need not go beyond the requirements of the proposed annex, absent a showing that for the reactor in question, Class 9 accidents are credible.^{16/} Should regulatory requirements with regard to accident analysis change as a result of the Staff's Three Mile Island investigations, any applicable changes would of course be applied in this proceeding.

Contention 13

TEXPIRG asserts that the FES is inadequate because it does not discuss the options available should the spent fuel pool be filled and there still not be a permanent

^{16/} Offshore Power Systems (Floating Nuclear Power Plants), ALAB-3808 268 194 (1978).

storage facility for high-level waste. However, should that occur the Applicant would have to apply for an expansion of the spent fuel pool and an opportunity for hearing would be provided to the public in connection with that proceeding.^{17/} Therefore, TEXPIRG's rights as well as the rights of all other members of the public with regard to the eventuality mentioned in the contention are fully protected. TEXPIRG also asserts that the FES should consider the impacts of a melt down in the spent fuel pool citing the German study working report No. 290. For the reasons discussed in the Staff's May 2, 1979, response to a similar contention filed by the Framsons in this proceeding, this German report provides no basis for the admission in controversy of an issue relating to melt down in the spent fuel pool and the contention should therefore be rejected.

Contention 14

TEXPIRG takes the position that the Atomic Energy Act is unconstitutional for various reasons. Needless to say this is not an issue which is litigable before this Board. The contention should therefore be rejected.

Contention 15

TEXPIRG alleges that the Staff has not properly evaluated occupational exposure to workers at the Allens Creek facility based upon operating experience at other BWR's such as Millstone, Nine Mile Point, Oyster Creek and Pilgrim at which plants it alleges the actual occupational exposure rate has been three times

^{17/} See Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41 (1978).

that predicted after only a short period of operation. The Staff believes that this contention complies with the requirements of 10 CFR §2.714 and should be admitted as a matter in controversy.

Contention 16

TEXPIRG asserts the Town of Wallis should be considered as the population center because, due to the large intercontinental airport near the plant, the Wallis population will exceed 25,000 by the year 2027. This contention should be rejected for several reasons. First, this Board in its PID, supra, at paragraph 81 found it appropriate to designate Rosenberg, Texas, as the population center with respect to the Allens Creek facility. Since the current population of Wallis, Texas, is only approximately 1,000 people any allegation that Wallis should be the appropriate population center based upon an alleged future population of 25,000 is totally speculative. No concrete new information has been suggested by TEXPIRG which would mandate a reconsideration of the Board's finding that Rosenberg is the appropriate population center. TEXPIRG neither identifies the alleged large intercontinental airport near the plant which it mentions in the contention nor explains why the presence of that airport would cause the population to exceed 25,000 at any time in the foreseeable future.

Contention 17

TEXPIRG alleges that the rupture of a 6-inch liquid petroleum gas pipeline near the plant could cause an explosion which would damage safety equipment and danger to workers at the plant. TEXPIRG asserts that either the plant or the

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pipeline should be moved. The Staff's position with regard to danger from this pipeline is set forth in Section 2.2.4 of the supplement II to the Allens Creek Safety Evaluation Report (NUREG-0515). In that section the Staff takes the position that the Applicant's analyses to date have not demonstrated that the explosion caused by rupture of the line need not be considered as a design basis event. However, the same section of the SER states that the Applicant has committed that no later than the submittal of the application for an operating license it will provide for Staff review and approval of physical measures to cope with the potential hazard from pipeline rupture. Specifically, the Applicant has committed to relocate the pipeline (as TEXPIRG suggests) if it cannot demonstrate by analysis or other alternate physical measures acceptable resolution of the potential hazard from the pipeline. Based on that commitment the Staff recommended granting of the construction permit because construction of the plant can proceed independent of and not foreclose practicable resolution of this matter. TEXPIRG has not challenged that Staff position nor explained why at this stage of the proceeding a decision is necessary with regard to relocation of the gas pipeline. Therefore, since the Staff's analysis of the matter is uncontested by TEXPIRG, the contention should be rejected.

Contention 18

TEXPIRG alleges that the soils at the Allens Creek site are not suited to support safely the heavy reactor building. However, TEXPIRG has supplied no basis to believe that its assertion is in fact correct. The contention is simply a bald

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conclusory statement without apparent support. More importantly, in this Board's PID, supra, at paragraphs 113 to 121 the Board dealt extensively with the problems of subsidence and ground slumping at the site and found that this was not a significant concern. TEXPIRG has suggested no new information which would warrant a reconsideration of that finding. Therefore, the contention should be rejected.

Contention 19

TEXPIRG asserts that the hearing in this matter should not go forward until each and every document listed as a reference in the Safety Evaluation Report is provided to each party and placed in the Houston public library. The short answer to this contention is that the Safety Evaluation Reports prepared by the Staff are summary documents which summarize the extensive Staff review which proceeds a hearing on any given application. If TEXPIRG has in mind specific documents relating to its contentions which it feels it needs for preparation of its case, it can file a motion for production of those documents; if appropriate, the Staff will produce the documents so requested pursuant to the normal discovery procedures under the Commission's rules of practice. However, there is no general requirement of which the Staff is aware that every document referenced in a Staff safety evaluation need be provided to the parties to the case unless specifically requested under the aforementioned discovery procedures. Therefore, this contention presents no issue litigable before this Board.

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Contention 20

TEXPIRG asserts that the computer program used to calculate the stresses on reactor and containment during operating basis and safe shutdown earthquakes is defective because it uses the square root of the sum of the squares method to add the stresses involved when the actual sum should be used as a worst case. TEXPIRG has obviously not reviewed supplement II to the Staff's Safety Evaluation Report for this application since in Section 3.8 of that document the Staff states its requirement that with one current exception the absolute summation method is required in order to calculate stresses on systems and components. Section 3.8 of the SER, Supplement II further indicates that in amendment 49 to the PSAR, the Applicant has committed to apply the absolute summation method except where Staff requirements permit use of the square root of the sum of the squares method. The one identified exception deals with the combination of dynamic responses within the reactor coolant pressure boundary and its supports; for these components, the Staff has permitted the Applicant to use the square root of the sum of the squares technique contingent upon performance of an elastic dynamic analysis to meet the appropriate ASME code, Section 3 service limits. Therefore, for most calculations of stress limits the Applicant has already committed to do what TEXPIRG wishes it to do; with regard to the one exception allowed by the Staff TEXPIRG has provided no basis whatever for its assertion that the square root of the sum of the squares methods is inadequate to protect the public health and safety. Therefore the contention should be rejected.

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Contention 21

TEXPIRG alleges that in order to be certain that the GE ECCS system will work sufficiently to protect the public health and safety full scale tests of the system are required. This contention should be rejected by the Board since the regulations do not require full scale testing of the ECCS system and provide in 10 CFR §50.46, Appendix K, ECCS acceptance criteria with which the Applicant must comply. There is no allegation in the contention that the Applicant will not comply with these criteria; to the extent that TEXPIRG alleges that the criteria are not sufficient to protect the public health and safety the contention constitutes a challenge to the ECCS acceptance criteria without the requisite showing of special circumstances pursuant to 10 CFR §2.758.

Contention 22

TEXPIRG alleges that the control room design and post-accident display instrumentation for the Allens Creek plant are not sufficient to ensure that the operators can safely control the plant under all accident conditions. This contention is based exclusively on the Three Mile Island incident. While TEXPIRG has not provided a basis to link the occurrence at Three Mile Island to the Allens Creek design and has not designated the specific instrumentation alleged to be inadequate, the Staff believes that the issue of control room design and instrumentation and for operation under post-accident conditions is one which is appropriate for discussion in this proceeding. The Staff therefore has no objection to the admission of an issue dealing with control room design and post-accident display instrumentation.

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Contention 23

TEXPIRG correctly points out that there is an error in Table 11.2 of Supplement II to the Safety Evaluation Report with regard to calculated releases of gaseous effluents from the Allens Creek facility. Specifically, in that table under the column headed Air Ejector Waste Gas Across from the Nuclide Zirconium 133 the entry in the table reads 2,000, it should read 20,000 and then under the column headed Total across from the same nuclide the number 2,300 should be changed to 23,000. These two changes represent typographical errors in the table and the Staff hopes to be submitting in the near future an errata sheet which includes these changes as well as several others. As this error is admitted and TEXPIRG does not allege it can affect the Staff's conclusions, there is no contention.

Contention 24

TEXPIRG states that many of these safety features are components which have not been shown safe or properly designed for Allens Creek, cannot be proven safe or suited for the plant within the time before completion of construction. Again, it requests that these components be subject to full scale testing prior to issuance of construction permit. This is an assertion of the most generalized kind without any identification of the specific safety features or components which TEXPIRG alleges to be unsafe. The contention is vague, unspecific and totally without supporting basis for the assertion that either any components are not safe or that full scale testing is required in order to assure their safety. The contention, therefore, does not fairly apprise the Staff and Applicant of the allegations which they must address. See Vermont Yankee v. NRDC, *supra*.

in addition, as the Staff has pointed out previously in responses to these contentions, there is no requirement pursuant to the Commission's regulations that any component be subject to full scale testing prior to the issuance of a construction permit. For these reasons this contention should be rejected.

Contention 25

TEXPIRG asserts that the Applicant is not technically qualified to design and construct the Allens Creek facility. However, this contention is based exclusively on (1) the fact that the Applicant has never before operated a nuclear plant, and (2) alleged events occurring during the construction of the South Texas facility. The contention should be rejected for two reasons. First, there is no regulatory requirement that the Applicant have previous operating experience in order to be found technically qualified to design and construct a nuclear facility. Secondly, none of the allegations of TEXPIRG with regard to the South Texas Project have any apparent relation to the technical qualifications of the Applicant to design and construct Allens Creek, and TEXPIRG has provided no nexus between the two. For example, TEXPIRG alleges that construction of the South Texas facility is over two years behind schedule and that the cost has doubled over that which the Applicant forecast three years ago. However, these statements even if true have no apparent connection which the Staff can see to technical qualifications of the Applicant to design and construct Allens Creek (since delays and increased costs could be caused for a variety of reasons). In addition, TEXPIRG raises allegations concerning the architect engineer for the

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South Texas facility, Brown and Root, which it alleges demonstrate a lack of technical qualifications. However, Brown and Root is not the architect engineer for the Allens Creek facility and therefore these allegations even if true have no apparent relation to the technical qualifications of the Applicant to design and construct Allens Creek. In short, TEXPIRG has made several allegations concerning incidents at the South Texas site without attempting to connect those alleged incidents to the application for a construction permit currently before this Board. Therefore, the Staff believes that the contention should be rejected.

However, to the extent TEXPIRG implies that the Applicant has been responsible for harassment or firing of quality assurance inspectors who have raised concerns, that is an extremely serious allegation which could form the basis for a good contention. In view of the severity of this assertion, the Staff believes that, should TEXPIRG be able to come forward with some basis for its statements within a reasonable time fixed by the Board, this issue should be considered in this proceeding.

Contention 26

TEXPIRG engages in total speculation with regard to the financial ability of the Applicant to design and construct the Allens Creek facility. For example, it speculates that the Applicant will not be able to cope with the additional costs necessary to implement changes as a result of the Three Mile Island accident. Secondly, it speculates that increased awareness of the public to high electricity rates will prevent the Applicant from getting the rate relief they desire. Lastly, it speculates that because of the Federal Clean Air Act and potential increase of enforcement of that Act that there will be decreased industrial expansion and TEXPIRG further speculates that there will be a decrease in sales of electricity because of decreased home building. It provides no basis for any of this speculation in which it engages and therefore this contention should be rejected

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as a matter in controversy since it presents no allegation with a stated basis which either the Staff or the Applicant could intelligently address.

Contention 27

TEXPIRG contends that the heavy metals released from Allens Creek plant into the Allens Creek cooling lake and ultimately into the Brazos River will adversely affect the proposed Brian Mount strategic petroleum reserve in Freeport, Texas. However, there is no basis provided for the implication that releases to the Allens Creek cooling lake or the Brazos River will be significant or that the impact on the strategic petroleum reserve will be significant. More importantly, plant discharges of cooling lake water to the Brazos River must comply with the Texas Department of Water Resources (TDWR) regulations. In this regard the FES supplement for the Allens Creek proceeding on page S.5-21 indicates "water quality criteria for Texas streams are established and enforced by the Texas Department of Water Resources. The EPA is kept informed of TDWR activities on all matters affecting EPA functions as promulgated under the Federal Water Pollution Control Act Amendments (FWPCA) of 1972." Therefore, if TEXPIRG believes that the limits on heavy metals for the Brazos River are inappropriate the proper forum for litigation of this contention would be with the Texas Department of Water Resources. The contention should therefore be rejected as an issue in controversy.

Contention 28

TEXPIRG asserts that the seismic design limits for the Allens Creek facility are inappropriate and that the proper safe shutdown earthquake for purposes of plant design would be a Modified Mercalli VII. However, this Board has previously decided in its PID at paragraphs 124 to 129 that the Staff's and Applicant's seismic analysis in this regard had been appropriate. TEXPIRG has offered no new information which would warrant a reconsideration of those Board findings, and therefore this contention

should be rejected. To the extent that TEXPIRG relies on any information with regard to the North Anna nuclear plant by its own admission this information was available in October of 1977 and therefore even under the terms of the Board's September 1 Order, TEXPIRG could have raised this contention earlier. This is yet another reason for the denial of this contention. Further, TEXPIRG has failed to allege any similarity between the design of the lakes at Allens Creek and North Anna which would support an allegation that the seismic analysis at North Anna could apply to Allens Creek.

Contention 29

TEXPIRG contends that the health and safety of the public is not protected by the Applicant's use of portable hydrogen recombiner units at the Allens Creek facility. However, TEXPIRG has obviously not reviewed the latest PSAR amendments filed by the Applicant, which indicate, specifically in Amendment 37, that the redundant hydrogen recombiner units will be permanently installed inside containment; it will not be portable. Since the contention is based on a misunderstanding of the Allens Creek design as currently proposed, it presents no issue litigable before this Board.

Contention 30

This contention is based on TEXPIRG's misunderstanding of the current state of the proposed Allens Creek design. It alleges that the public health and safety will not be safeguarded because of the Applicant's decision not to use water sprays to maintain the charcoal adsorber material below ignition temperature. An identical contention has already been admitted as McCorkle Contention 17. See April 12 Order at p. 6. While the Staff, therefore, supports the admission of this contention as an issue in controversy, TEXPIRG and Ms. McCorkle should be consolidated for purposes of presenting evidence and cross-examination on this issue.

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Contention 31

TEXPIRG contends that the Applicant should not be allowed to construct the gaseous radwaste system until it is determined whether modifications to the Commission's regulations will require a redesign of that system. TEXPIRG states that it desires this relief so that the gaseous radwaste system in the facility will be capable of "smooth modifications" in the event of changes in the regulations. The Applicant is committed to design and construct the Allens Creek facility to comply with current Commission regulations. Should those regulations change and should they be applied as modified to the Allens Creek facility, the Applicant will have to comply with them. However, it appears that this contention deals only with the increased cost which would be involved should the Applicant have to redesign its system in order to comply with future modifications in the Commission's regulations. As this Board knows, however, the facility must be designed so as to provide reasonable assurance that the public health and safety regardless of cost and therefore TEXPIRG's contention provides no issue which could be litigated before this Board at this time.

Contention 32

TEXPIRG alleges that the Allens Creek control rod drive system is insufficient to protect the public because experience with other reactors has indicated that GE designed control rod drive systems have had defective float switches which could slow control rod insertion into the core. The Staff believes that the contention complies with the requirements of 10 CFR §2.714 and should be admitted as an issue in controversy.

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Contention 33

TEXPIRG contends that prior to issuance of a construction permit for the Allens Creek facility that task A-11 in the Staff's current task action plan with regard to fracture toughness criteria must be resolved. Again, this contention is based upon a misunderstanding of TEXPIRG with regard to current Staff requirements. Task A-11 does not apply to Allens Creek. In this regard Appendix C of Supplement 2 to the Allens Creek Safety Evaluation Report at p. C-20 states that task A-11 applies to operating plants and that:

Section 3 of the task action plan for task A-11 indicates that current criteria related to fracture toughness together with the materials currently employed for reactor vessel fabrication are adequate to ensure suitable safety margins for the reactor vessels in plants now being licensed throughout their design lives. As indicated in Section 5.2.3 of this Supplement No. 2 to the SER, the reactor vessel for Allens Creek will be designed, fabricated, tested, inspected and operated in conformance with current acceptance criteria and materials.

Therefore, since this portion of the task action plan does not apply to the Allens Creek facility, this contention presents no issue which is litigable before the Board and should be rejected as an issue in controversy.

Contention 34

TEXPIRG asserts that the Applicant's monitoring of events in the containment building during a LOCA or similar incident is not adequate to detect immediately

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the occurrences of hydrogen explosions. This contention is based solely on the occurrence at Three Mile Island. As with Contention 22, this contention is not a model of precision which states a clear basis pursuant to 10 CFR §2.714. However, the Staff believes that, as it relates to post-accident operation of control room instrumentation, this issue is appropriate for discussion in this proceeding as a result of the Three Mile Island incident. We therefore do not object to its admission as an issue in controversy.

Contention 35

TEXPIRG argues that redundant pressure signals should be provided to protect the Applicant's relief valve system against overpressurization. This contention should be denied as moot since the redundant pressure signal which TEXPIRG desires is in fact provided. See PSAR Section 5.2.2.2.4 and Section 5.2.2 of Supplement No. 2 to the Safety Evaluation Report for the Allens Creek application.

Contention 36

This contention, identical in substance to subpart e of Contention 10, alleges that there has been no demonstration that Houston could be evacuated in the event of the maximum credible accident at Allens Creek. For the reasons stated in opposition to subpart e of Contention 10, the Staff believes that this contention should be rejected by the Board.

Contention 37

TEXPIRG avers that the Applicant's charcoal adsorber beds in the off-gas system need additional safeguards in order to protect the health and safety of the public. TEXPIRG then lists several additional safeguards which it believes are required. However, this contention should be rejected for two reasons. First, as indicated in Section 11.2.2 of Supplement 2 to the Safety Evaluation Report, the gaseous waste system was modified as part of the Applicant's change from two units to one unit for this application, and the modification specifically included, for the first time, the charcoal adsorber beds. Therefore, this contention could have been raised under the Board's September 1 Order and should not now be entertained pursuant to the Board's April 12, 1979 Order. Secondly, TEXPIRG provides no basis for its assertion that additional measures are required to supplement the current gaseous waste system and in fact TEXPIRG does not contest the Staff's conclusion that the gaseous waste system is capable of reducing releases of radioactive materials in gaseous effluents to "as low as reasonably achievable" levels in accordance with 10 CFR §50.34a and Appendix I to 10 CFR Part 50. The contention therefore is devoid of the required statement of basis and should be rejected as an issue in controversy.

Contention 38

TEXPIRG asserts that the Applicant should be required to have a screening program as part of its general employment program to screen out cancer prone potential employees with a history of radiation treatment, asthma, exuma, uriticara and pneumonia.

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10 CFR Part 20 sets forth limits on occupational radiation doses. TEXPIRG's contention amounts to an assertion that the dose limits of Part 20 are not sufficient to protect persons in restricted areas. See, e.g., 10 CFR §20.103, §20.104. Such an allegation constitutes a challenge to the regulations without any demonstration of special circumstances pursuant to 10 CFR §2.758. The contention should, therefore, be excluded as a matter in controversy.

Contention 39

TEXPIRG asserts that the spent fuel cooling system is inadequate in the Allens Creek design since there is no redundancy provided for fissioning material. This contention should be excluded as an issue in controversy. TEXPIRG's assertion that there is no redundancy in the spent fuel cooling system ignores the very clear statement in Section 9.2.2 of Supplement No. 2 to the SER that "the spent fuel cooling system consists of one 100 percent capacity train with redundant active components." Therefore, it appears redundancy is provided in the spent fuel cooling system. TEXPIRG provides no basis to believe that the system as now designed will not maintain the temperature of the water in the spent fuel pool within the Allens Creek design loading condition discussed in Section 9.2.2 of the SER supplement. The use of the residual heat removal system in parallel with the spent fuel cooling system, with which TEXPIRG appears to be so concerned in its contention, is solely an additional backup to the active redundancy already provided in the spent fuel system as indicated in the SER. Therefore, this contention does not comply with the requirements of 10 CFR §2.714 and should be denied.

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Contention 40

While this contention appears to deal with the potential for a reactor coolant pipe break prior to reactor vessel rupture, the contention is entirely incomprehensible to the Staff; it is impossible to discern exactly what TEXPIRG is asserting as a problem with the Allens Creek design. Generally, however, as indicated in Section 5.2.1 of Supplement 2 to the SER for this application all reactor coolant pressure boundary components are designed in accordance with design load combinations and associated stress and deformation limits specified for ASME Code Class 1 components. TEXPIRG is contending that the ASME requirements which are acceptable to the Staff are not in fact adequate to protect the public health and safety. It has not identified any specific ASME Code requirement which it believes to be inadequate nor provided the basis for the alleged inadequacy. For this reason and because the contention is not understandable in its present form it should be rejected by the Board.

Contention 41

TEXPIRG asserts that it will risk economic injury unnecessarily if the plant is constructed without a better survey of growth faults in the site area. However, these alleged economic injury is not specified by TEXPIRG nor is it explained how such an economic injury could be a litigable issue before the Board. More importantly, however, this Board in its PID, in paragraphs 108, 109 and 121,

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has already dealt with the question of growth faults and TEXPIRG has raised no new information which would warrant reconsideration of this issue at this time. Therefore, the contention should be rejected as an issue in controversy.

Contention 42

This contention is simply a repetition of Contention #2 and the Staff would simply emphasize that whether or not future Federal regulations will permit the use of natural gas to fuel new base load steam electric power plants is entirely speculative. The contention should therefore be rejected as an issue in controversy.

Contention 43

TEXPIRG asserts that the off-gas system charcoal delay tanks should be designed to withstand the design basis tornado missile since in the event of tornado missile penetration of these tanks radioactive materials in decay will be dispersed. However, TEXPIRG provides no basis for its assertion that the off-gas charcoal delay tanks are susceptible to tornado missile damage or that should they be damaged the consequences would be unacceptable pursuant to the Commission's regulations. Indeed, Table 15.1 of the Staff's Safety Evaluation Report indicates that in the event of an accident resulting in off-gas system rupture, the whole body dose at the exclusion area boundary would be a small fraction of 10 CFR Part 100 dose guidelines. TEXPIRG has not taken issue with that conclusion. The contention should therefore be rejected by the Board.

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Contention 45^{18/}

TEXPIRG asserts that radioactive emissions from the Allens Creek plant may confuse electronic guidance systems in airplanes flying in the vicinity of the facility. However, TEXPIRG provides no basis for its assertion that such confusion of guidance systems has in fact ever occurred or could occur because of radioactive emissions from Allens Creek. The fact that two planes have crashed in the vicinity of nuclear facilities in the past, as pointed out by TEXPIRG, is irrelevant to its assertion unless it can demonstrate that radioactive effluents from the facilities involved had anything to do with those aviation accidents. Since the contention does not comply with the requirements of 10 CFR §2.714, it should be rejected by the Board as an issue in controversy.

Contention 46

The essence of this contention is that relief valves have proved unreliable in the past. It further states that the reduction from 22 to 19 valves exacerbates this problem. TEXPIRG suggests that the Applicant should be required to use the relief valve with the best design and to use a variety of manufacturer's products to prevent common mode failures. The Staff believes that this contention meets the minimum requirements of 10 CFR §2.714 and should be admitted as an issue in controversy.

^{18/} There was no Contention 44 in the Staff's copy of TEXPIRG's pleading.

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Contention 47

TEXPIRG asserts that the Applicant should be required to maintain a system in the plant that permits taking of a primary coolant sample when the containment building is dangerously radioactive such as was the case at Three Mile Island. TEXPIRG further asserts that unless such a system is required, the utility operating the plant may be unable to assess how much fuel damage has occurred in the event of a serious accident and that lack of this knowledge may result in incorrect operator action being taken to cope with such an incident. The Staff believes that this contention complies with the requirements of 10 CFR §2.714 and should be admitted as an issue in controversy.

Contention 48

Based on the Three Mile Island incident TEXPIRG contends that the Applicant should be required to maintain a system to ascertain accurately how much noncondensable gas is in the reactor vessel to assist in estimating the possible explosion hazard in the vessel during a serious accident. TEXPIRG further asserts that

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without such a system there would be an inability to gauge accurately the amount of noncondensable gas in the reactor and that this would increase the chance of an explosion and damage to the fuel geometry or physical breaking of the fuel rod cladding. For the reasons given in response to Contentions 22 and 34, the Staff has no objection to the admission of this contention as a matter in controversy.

Contention 49

TEXPIRG asserts that the Applicant as a result of Three Mile Island and Oyster Creek incidents should be required to ensure that water level indicators are used which accurately reflect the amount of water in the reactor vessel during an accident. For the reasons given in response to Contentions 22 and 34, the Staff has no objection to the admission of this contention as a matter in controversy.

Contention 50

TEXPIRG asserts that in the event of a steam line break rapid depressurization of the reactor vessel would take place resulting in frothing of the core steam bubbles and drawing of coolant water into the reactor. It further asserts that the movement of this water will cause an increase in reactivity before the SCRAM system could be effective. However, the Applicant's fast SCRAM system was introduced for the first time in Amendment 34 to the PSAR on May 16, 1977; hence,

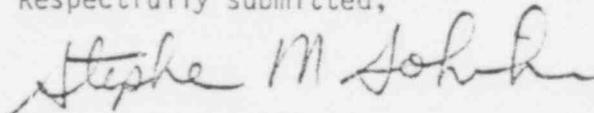
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this contention could have been raised pursuant to the Board's September 1 Order and therefore it is inappropriate under the guidelines of the Board's April 12, 1979 Order. The contention should therefore be rejected as an issue in controversy.

CONCLUSIONS

For the reasons stated above, the Staff believes that Contentions 15, 22, 30, 32, 34, 46, 47, 48 and 49 should be admitted as issues in controversy. In addition, the Board should require TEXPIRG to come forward with a basis, if it has one, for its assertions in Contention 25 with regard to harassment and firing of quality assurance inspectors. All of the remaining contentions should be excluded by the Board.

Respectfully submitted,



Stephen M. Sohinki
Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 5th day of June, 1979.

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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))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO ADDITIONAL CONTENTIONS OF TEXPIRG" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk by deposit in the Nuclear Regulatory Commission internal mail system, this 5th day of June, 1979:

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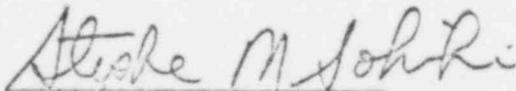
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