

NRC PUBLIC DOCUMENT ROOM
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

10/09/79

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'S RESPONSE TO PETITION FOR
LEAVE TO INTERVENE FILED BY DONALD WEAVER

By letter dated July 17, 1979, Donald D. Weaver petitioned the Commission to halt licensing of the Allens Creek facility based upon the present lack of long term storage repositories for nuclear waste. He stated that he is an area resident and showed an address in Simonton, Texas. By a second letter dated August 9, 1979, Mr. Weaver additionally stated that he considers the proposed plant to be a threat to the health of his family. After request for clarification of his intention concerning intervention in this proceeding, Mr. Weaver submitted an additional letter on August 28, 1979. In that letter, he stated that he wishes to intervene as a full party; his particular interest concerns the long term waste disposal problem and his desire for a moratorium on construction of nuclear plants until a waste disposal repository is available. As an attachment to his August 28 letter Mr. Weaver submitted a "contention" development of three pages. Thereafter, by an undated letter received on September 18, 1979 by the Commission's Docketing and Service Section, Mr. Weaver submitted three contentions which he wishes to have admitted as issues in controversy in this proceeding.

As discussed below, the NRC Staff believes that although Mr. Weaver has demonstrated an "interest which may be affected by the proceeding" he has failed to set forth at least one valid contention as required by 10 CFR §2.714.

1270 346

7911050

257

Standing

Contention 1 contained in the latest undated letter received from Mr. Weaver is actually not a contention at all but a statement of his interest in the captioned proceeding. The petitioner states that he and his family reside less than 15 miles from the proposed site of the Allens Creek facility and that he will be adversely affected by radioactive emissions from the plant which will pose a health hazard to his wife, his children, and himself. 10 CFR §2.714(a)(2) requires that a petitioner for leave to intervene set forth his or her interest in the proceeding and how such interest may be affected by the results thereof. In this regard, consideration is to be given to the nature of the petitioner's right to be made a party, the nature and extent of petitioner's property, financial or other interest in the proceeding, and the possible effect on such interest of any order entered in the proceeding. 10 CFR §2.714(d). In addition, the petition must identify the specific aspects of the subject matter of the proceeding on which intervention is sought. 10 CFR §2.714(a)(2).

The Commission and Appeal Board have previously emphasized that judicial concepts of standing are controlling in determining whether a petitioner has satisfied the foregoing requirements for intervention as of right. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-614 (1976); Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1144-1145. Specifically, a petitioner must show "injury in fact" (which has occurred or will probably result from the licensing

of the facility) and that his alleged interest is "arguably within the zone of interest" protected by either the Atomic Energy Act or EPA. Pebble Springs, supra.

The Appeal Board has recently held that an allegation of close proximity to a proposed facility is deemed enough, standing alone, to satisfy the interest requirements of 10 CFR §2.714. Virginia Electric Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). Although no specific distance from a nuclear power plant has evolved from Commission decisions to define the outer boundary of the geographic "zone of interest" distances up to 50 miles have been found not to be so great as to preclude a finding of standing based on residence. See e.g., Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421, n. 4 (1977). Cf. Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633-34 (1973); Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190, 193, reconsid. den., ALAB-110, 6 AEC 247, aff'd, CLI-73-12, 6 AEC 241 (1973)

Therefore, the Staff believes that Mr. Weaver has satisfied the minimal requirements of 10 CFR §2.714 regarding interest, as those requirements have been interpreted by the Appeal Board.

Contentions

As the Staff has discussed above, we believe that contention 1 submitted by Mr. Weaver is not a contention at all but is merely a statement of his interest

in the proceeding. Therefore, we address only contentions 2 and 3 below.

Contention 2

Mr. Weaver alleges that the proposed cooling lake will increase the probability of Brazos River overflow, increasing the danger of flooding to his property. However, he provides no basis for his statement that the cooling pond will contribute in any manner to the flooding of the river. More importantly, the subject of possible flooding and its impacts were specifically dealt with in the partial initial decision (PID) in this matter, and Mr. Weaver has established no reason which would dictate a reassessment of the findings made by this Board in that decision. See Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Units 1 and 2), LBP-75-66, 2 NRC 776, 784 to 785 (1975). Indeed, the size of the proposed lake has been substantially reduced from the which was originally envisioned for two units, and the flooding potential should be even less as a result. Further, the Appeal Board has made it clear that unless the petitioners in this proceeding can demonstrate a material change in circumstances since the date of the PID, matters considered and decided in that decision should not be relitigated. Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC ___, Docket No. 50-466 (April 4, 1979) slip op. at 15-16. Therefore, this contention should not be admitted as an issue in controversy by this Board.

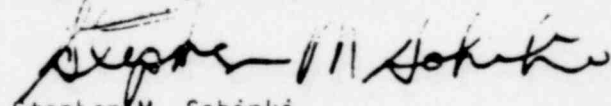
Contention 3

Mr. Weaver asserts that alternative locations "may not have been adequately considered following the reduction in size of the proposed site. He also asserts that the present and future population of the area dictates against the construction

1270 349

of a nuclear facility at the proposed site. The Staff believes that this contention should be rejected by the Board for two reasons. The first, Mr. Weaver's statement concerning alternate sites is a bald assertion without any supporting basis; it is entirely conclusory. With regard to the petitioners' assertions concerning population growth, this Board considered demographic issues in the PID, 2 NRC at 798, and the findings which the Board made concerning site suitability took into account this demographic data. In addition, updated population projections are presented in the Staff's supplement to the Final Environmental Statement in this proceeding in Section S.2.1 and Tables S.2.1 to S.2.4. Mr. Weaver has presented nothing which would dictate the necessity for a re-assessment of the site suitability findings and more specifically the demographic data contained either in the PID or in the supplement to the Final Environmental Statement and therefore this contention should be rejected by the Board.^{1/}

Respectfully submitted,


Stephen M. Sohinki
Counsel for NRC Staff

^{1/} If Mr. Weaver's statements concerning the need for a waste repository prior to resumption of licensing (contained in his August 28, 1979 letter) were intended as a contention, the issue raised is clearly not litigable in this proceeding since as this Board has previously recognized, the Court in Natural Resources Defense Council, Inc. v. NRC, 582 F.2d 166 (2nd Cir. 1978), affirmed the decision of the Commission in NRDC, "Denial of Petition for Rulemaking" Docket No. 50-18, 42 Fed. Reg. 34391 (July 5, 1977) in holding that the Commission is not required to withhold action on pending or future applications for nuclear power reactor licenses until it makes a determination that high level radioactive waste can be permanently disposed of safely. See "Order Ruling Upon Intervention Petitions" dated February 9, 1979, p. 27.

It should be noted however, that in State of Minnesota v. NRC, ___ F.2d ___, Docket No. 78-1269, (D.C. Cir., May 23, 1979), the U.S. Court of Appeals for the District of Columbia Circuit recently remanded a case involving a spent fuel expansion license amendment to the Commission for further proceedings regarding the feasibility of proposed long term waste disposal solutions. While this decision did not overturn the Commission's determination that licensing should continue absent a current solution to the waste disposal problem, it required the Commission to reexamine the feasibility of long term waste disposal plans in that context.

1270 350

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

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE FOR LEAVE TO INTERVENE FILED BY DONALD WEAVER" 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, through deposit in the Nuclear Regulatory Commission's internal mail system, this 9th day of October, 1979:

Sheldon J. Wolfe, Esq., Chairman *
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

Dr. E. Leonard Cheatum
Route 3, Box 350A
Watkinsville, Georgia 30677

Mr. Gustave A. Linenberger *
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

R. Gordon Gooch, Esq.
Baker & Botts
1701 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

J. Gregory Copeland, Esq.
Baker & Botts
One Shell Plaza
Houston, Texas 77002

Jack Newman, Esq.
Lowenstein, Reis, Newman & Axelrad
1025 Connecticut Avenue, N.W.
Washington, D. C. 20037

Richard Lowerre, Esq.
Asst. Attorney General for the
State of Texas
P. O. Box 12548
Capitol Station
Austin, Texas 78711

Hon. Jerry Sliva, Mayor
City of Wallis, Texas 77485

Hon. John R. Mikeska
Austin County Judge
P. O. Box 310
Bellville, Texas 77418

Atomic Safety and Licensing
Appeal Board*
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

1270 351

Atomic Safety and Licensing
Board Panel *
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Docketing and Service Section *
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Mr. John F. Doherty
4327 Alconbury Street
Houston, Texas 77021

Mr. and Mrs. Robert S. Framson
4822 Waynesboro Drive
Houston, Texas 77035

Mr. F. H. Potthoff, III
1814 Pine Village
Houston, Texas 77080

D. Marrack
420 Mulberry Lane
Bellaire, Texas 77401

Mr. Jean-Claude De Bremaecker
2128 Addison
Houston, Texas 77030

Gregory J. Kainer
11118 Wickwood
Houston, TX 77024

Gayle De Gregori
2327 Goldsmith
Houston, Texas 77030

Mrs. W. S. Cleaves
8141 Joplin Street
Houston, Texas 77017

Barbara Karkaki
1917 Wentworth
Houston, TX 77004

Carro Hinderstein
8739 Link Terrace
Houston, Texas 77025

Texas Public Interest
Research Group, Inc.
c/o James Scott, Jr., Esq.
8302 Albacore
Houston, Texas 77074

Brenda A. McCorkle
6140 Darnell
Houston, Texas 77074

Mr. Wayne Rentfro
P.O. Box 1335
Rosenberg, Texas 77471

Rosemary N. Lemmer
11423 Oak Spring
Houston, TX 77043

Laura Lewis
1203 Bartlett #4
Houston, TX

Mrs. Karen L. Stade
P.O. Box 395
Guy, Texas 77444

Jon D. Pittman, Sr.
2311 Bamore
Rosenberg, Texas 77471

Ms. Ann Wharton
1424 Kipling
Houston, Texas 77006

Ms. Kathy Mohnke
1411 Lamonte
Houston, Texas 77018

1270 352

Mr. James H. Robinson
1228 Bomar
Houston, Texas 77024

Ms. Bonny Wallace
614 Meadowlawn
LaPorte, Texas 77571

Dr. Marlene R. Warner
6026 Beaudry
Houston, Texas 77035

Mr. Eugene E. Mueller
15602 Corsair Road
Houston, Texas 77053

Mr. William J. Schuessler
5810 Darnell
Houston, Texas 77074

D. B. Waller, Jr.
1708 Kipling
Houston, TX

Jeffery R. West
10903 Sageberry
Houston, TX 77039

Janice Blue
1708 Rosewood
Houston, TX 77004

Gabrielle Cosgriff
5203 Crystal Bay
Houston, TX 77043

Charles Andrew Perez
1014 Montrose Blvd.
Houston, TX 77019

Leotis Johnston
1407 Scenic Ridge
Houston, TX 77043

Dick Day
3603 Drummond
Houston, Texas 77025

Niami Hanson
6441 1/2 Mercer
Houston, Texas 77005

Mr. Robert C. Kuehm
1155 Curtin
Houston, Texas 77018

Ms. Dana Erichson
327 Hedwig
Houston, Texas 77024

Ms. Nancy L. Durham
Box 328
Simonton, Texas 77476

T. E. Elder
2205 Hazard
Houston, TX 77019

Helen Foley
3923 Law #16
Houston, TX 77005

Marjorie A. Gurasich
Route 1, Box 410
Wallis, TX 77485

Mrs. R. P. Erichson
327 Hedwig Road
Houston, TX 77024

Abraham Davidson
704 Hyde Park
Houston, TX 77006

Susan G. McGuire
8837 Larston
Houston, TX 77055

Margaret Bishop
11418 Oak Spring
Houston, TX 77043

1270 353

Robin Griffith
1034 Sally Ann
Rosenberg, TX 77471

Ron Waters
3620 Washington Avenue
No. 362
Houston, TX 77007

Glen Van Slyke
1739 Marshall
Houston, TX 77098

J. Morgan Bishop
11418 Oak Spring
Houston, TX 77043

Mrs. Connie Wilson
11427 Oak Spring
Houston, TX 77043

Patricia L. Streilein
Route 2, Box 398-C
Richmon, TX 77469

Carolina Conn
1414 Scenic Ridge
Houston, TX 77043

John and Jeanette Beverage
13031 Harwin
Houston, TX 77072

Stephen A. Doggett, Esq.
Pollan, Nicholson & Doggett
P.O. Box 592
Rosenberg, TX 77471

J. Michael Ancarrow
4310 Bell
Houston, TX 77023

Virginia Lacy Perrenod
2704 Beatty #112
Houston, TX 77023

Jeanne Robertson
23 Nueces Street
Bay City, TX 77417

Barbara Blatt
4314 1/2 Bell Street
Houston, TX 77023

Laura Brode
5422 Olana Drive
Houston, TX 77032

Stephanie M. Brown
3510 E. Broadway #612
Pearland, TX 77518

James Chilcoat
4319 Bell Street
Houston, TX 77023

Barbara J. Ginn
4309 Bell
Houston, TX 77023

Dorothy J. Ryan
4309 Bell
Houston, TX 77023

Rachel Weinreb-Kuehm
1155 Curtin
Houston, TX 77018

Mary L. Fuller
614 Bienville Lane
Houston, TX 77015

Frances Pavlovic
111 Datonia
Bellaire, TX 77401

W. Matthew Perrenod
4070 Merrick
Houston, TX 77025

Bryan L. Baker
1118 Montrose
Houston, TX 77019

Fern Barnes
2406 Morning Glory
Pasadena, TX 77503

1270 354

James R. Piepmeier
618 West Drew
Houston, TX 77006

Elinore P. Cumings
926 Horace Mann
Rosenberg, TX 77471

Mr. and Mrs. Larry W. Scott
Route 2, Box 31 H.Q.
Richmond, TX 77469

Ms. Gertrude Barnstone
1401 Harold
Houston, Texas 77006

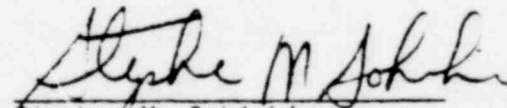
Roy E. Loyless
P.O. Box 249
Simonton, TX 77476

Donald D. Weaver
P.O. Drawer V
Simonton, TX 77476

Dorothy F. Carrick
Box 409 Wagon Road
RFD #1
Wallis, TX 77045

Mr. Robert R. Edgar
Rt. 2 Box 31-HS
Richmond, Texas 77469

Ms. Kathryn Ottie
Rt. 2 Box 62L
Richmond, Texas 77469


Stephen M. Sohinki
Counsel for NRC Staff

1270 355