

10/09/79

TIC

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 SUPPLEMENTS TO PETITIONS FOR LEAVE TO INTERVENE FILED BY BRYAN BAKER, MR. AND MRS. J. MORGAN BISHOP, DOROTHY CARRICK, CAROLINA CONN, ELINORE CUMINGS, STEPHEN DOGGETT, ROBIN GRIFFITH, LEOTIS JOHNSTON, ROSEMARY LEMMAR, KATHERINE OTTO, FRANCES PAVLOVIC, CHARLES PEREZ, WILLIAM SCHUESSLER, PATRICIA STREILEIN, MARLENE WARNER, AND CONNIE WILSON

By an order dated August 6, 1979 this Board established September 14, 1979 as the deadline for the filing of contentions by all petitioners for leave to intervene in the captioned proceeding. Each of the above-named individuals has filed a timely supplement to their petition for leave to intervene setting forth the contentions which they seek to have admitted as issues in controversy in this proceeding. The NRC Staff responds as set forth below to the contentions of each of the named petitioners.<sup>1/</sup>

Bryan Baker

Contention 1

Mr. Baker contends that the Applicant is not financially qualified to design and construct the Allens Creek facility. However, the contention consists

<sup>1/</sup> The Staff has responded in separate pleadings to the supplements to the intervention petitions filed by Glen Van Slyke and Donald D. Weaver.

1293 238  
7911080 202

G

largely of speculation concerning possible future difficulties which the Applicant may encounter in acquiring the rate relief necessary to construct the plant. The petitioner asks that the Board require the Applicant to obtain "secure funding" from a private source to be repaid after the plant is constructed and (2) that the Applicant should be required to demonstrate a certainty that the Texas PUC and the various local governments will provide the Applicant with the necessary funds to construct the plant.

This contention should be rejected because it is based largely on speculation and because the demonstration of financial qualifications which the petitioner would require goes far beyond what is required under Commission regulations or practice. As the Commission itself noted in the Seabrook proceeding, "a 'reasonable assurance' [of financial qualifications] does not mean a demonstration of near certainty that an Applicant will never be pressed for funds in the course of construction. It does mean that the Applicant must have a reasonable financing plan in light of relevant circumstances." Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), CLI-78-1, 7 NRC 1, 18 (1978). In the course of the Seabrook decision, the Commission specifically recognized that in the past few years many utilities in the process of constructing nuclear facilities have experienced unforeseen financial difficulties. In requiring that the Applicant in this proceeding demonstrate a near certainty that the Texas PUC will grant the requested rate relief, the petitioner requests a showing which the Commission clearly determined was not required in order to find that an Applicant for a construction permit was financially qualified.

Nor is there any basis, either in the regulations or Commission practice, for requiring that the Applicant obtain funds for the construction of a nuclear facility from any particular source.

The Staff's examination of the Applicant's financial qualifications in this proceeding reflects the Commission's guidance in the Seabrook decision. As stated in Section 20.5 of Supplement No. 2 to the Staff's Safety Evaluation Report (SER), the Staff conclusion that the Applicant is financially qualified to design and construct the Allens Creek facility is based upon an assessment that the financial projections submitted by the Applicant constitute a reasonable financing plan, and that:

We do not consider these projections to be a forecast of the financing which will necessarily occur. They need only demonstrate one possible way by which the planned construction program, including the subject facility, might reasonably be financed. It is expected that financing plans will change from time to time to accommodate changing conditions.

Mr. Baker has raised nothing, except pure speculation, which calls into question either the reasonableness of the financing plan or its ability to adapt to changing economic conditions over the period during which the Allens Creek facility will be constructed.

Finally the Staff notes that Mr. Baker states that he could have raised this contention in 1978 using the information that was then available to him but chose to wait until more recent information was available. This Board's "Supplemental Notice of Intervention Procedures," dated June 18, 1979, (44 Fed. Reg 35062) made it clear that only contentions which could not have been raised pursuant to the Board's prior notices could be raised under the June 18 notice. Since it appears that by Mr. Baker's own admission he could have raised this

contention pursuant to prior notices of this Board, the Staff believes that that admission constitutes an additional reason for the rejection of the contention.

Contention 2

The gist of this contention is that the economic cost of operating the Allens Creek facility will be significantly greater than that projected by the Applicant due to the fact that the Applicant has substantially overestimated the capacity factor for the proposed facility. This contention should be rejected by the Board, since the Appeal Board made clear in Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162-63 (1978) that, absent a showing that a particular alternative is environmentally superior to the proposed facility, the fact that the economic cost of the proposed facility may be greater than some alternatives is not an issue to be considered in licensing proceedings. While the petitioner states that the 80% capacity factor should be reevaluated because it "will greatly affect the comparison of nuclear costs to costs of all alternative energy sources" he does not allege that any alternative energy source is environmentally superior to the proposed facility nor does he even allege that the cost comparison of nuclear power with any specific alternative would change in light of his proposed reevaluation of the projected 80% capacity factor. For these reasons, the Staff believes that this contention should be rejected by the Board.

1293 241



Mr. and Mrs. J. Morgan Bishop

Contention 1

The Bishops allege that the population within 50 miles of the proposed facility has been underestimated and that the plant should not be sited so close to Houston since in the event of a major accident Houston would have to be evacuated with attendant serious consequences. The petitioners provide no basis either for their assertion that the population has been underestimated or for the speculative allegation that it would be necessary to evacuate Houston as a result of any design basis accident at the Allens Creek plant.

With regard to demographic projections for the area surrounding the proposed site, this Board has already dealt with such demographic data in the context of its 10 CFR Part 100 site suitability findings in the partial initial decision (PID) in this matter. Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Units 1 and 2) LBP-75-66, 2 NRC 776, 798. The Board specifically considered demographic projections to the year 2000, and with specific regard to the city of Houston, stated:

Since the nearest large city, Houston, is sufficiently distant, no special considerations contemplated by 10 CFR §100.11(a)(3) need to be given to distance from that population center.

Subsequent to this Board's consideration of population data in the PID, the Staff has undertaken to update population projections for the site in both Supplement No. 2 to the SER, Section 2.1.2, and the Final Supplement to the Final Environmental Statement (FES Supplement), Section S.2.1 and Tables S.2.1 through S.2.4. The Bishops have provided no basis for either a reassessment of this Board's findings in the PID with regard to regional demography, or upon

which to challenge the updated demographic projections in the SER and FES Supplement.

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).

In addition, this Board rejected a similar contention in its "Order Ruling Upon Intervention Petitions" dated February 9, 1979 because the petitioner there, while alleging that new studies showed a substantial population growth in the area of the proposed site, had not alleged in what manner these increases in population negated the qualifications of the proposed site to conform to the Commission's site selection criteria in 10 CFR Part 100. Similarly, the Bishops have failed to demonstrate that any of the site selection criteria contained in 10 CFR Part 100 would be violated by the construction of a nuclear facility at the proposed site.

Finally, if the "major accident" which the Bishops allege would necessitate the evacuation of Houston was meant by them to be the type of accident generally referred to as "Class 9," the Appeal Board has ruled that the Commission has adopted a policy against evaluating the consequences of Class 9 accidents on individual license applications for land based nuclear power plants absent a showing that, for the reactor in question, there are special circumstances

that increase the probability of such an event. Offshore Power Systems (Floating Nuclear Power Plants) ALAB-489, 8 NRC 194 (1978). In its very recent "Memorandum and Order" of September 14, 1979, in the same case, the Commission refrained from expressing any views on the question of consideration of consequences of Class 9 accidents at land based reactors. Offshore Power Systems (Floating Nuclear Power Plants) CLI-79-\_\_\_, 10 NRC \_\_\_, (September 14, 1979) (slip op. at 9). Thus, the Appeal Board's ruling on that question in ALAB-489 continues to be controlling. The Bishop's have alleged no special circumstances affecting the probability of a Class 9 accident in this particular proceeding, and therefore have no basis upon which to urge the consideration of such accidents at the Allens Creek facility.

In the above-referenced "Memorandum and Order," the Commission, stating that it is concerned about the entire question of Class 9 accidents, announced its intent to complete the rulemaking begun by the proposed Annex A to Appendix D to 10 CFR Part 50, and to reexamine Commission policy in the area. Should Commission policy with regard to consideration of these accidents change, this Board would of course be bound to implement whatever changes result from the completed rulemaking proceeding and allow consideration of contentions involving such accidents at that time, if appropriate. Similarly, should the Commission's criteria for emergency planning change so as to make consideration of the evacuation of Houston an appropriate consideration in this proceeding, this Board would be bound by that rule change and would have to allow consideration of appropriate contentions involving those matters.

At the present time, however, for the reasons stated above, the Staff believes that this contention should be rejected by the Board.

1293 244

Contention 2

The Bishops allege that the Applicant has grossly underestimated the population

within two to three miles of the plant boundary and state that plans are being studied for a major recreational area similar to Disney World in the vicinity of the plant. They state that if this should occur, there would be a major influx of residents and large numbers of tourists in the area. The Staff believes that this contention should be rejected as entirely speculative with regard to the allegations of plans for a Disney World type area in the vicinity of the plant. Further, the petitioners state no basis for their allegations concerning under-estimation of the population within two to three miles of the site. Indeed, in Supplement No. 2 to the SER, in the section referenced in response to contention 1, the Staff specifically considered updated information with regard to population in the area within two to three miles of the proposed facility, since this area is within the designated low population zone (LPZ), and concluded that the updated demographic data did not change the conclusion that the LPZ meets the requirements of the site suitability criteria found in 10 CFR Part 100.

For these reasons, the Staff believes that this contention should be rejected by the Board.

### Contention 3

The Bishops allege that the construction permit for the proposed facility should be denied because there will be more people within 50 miles of the Allens Creek plant than within 50 miles of several other named facilities. While that may be true, that fact is irrelevant to the determination as to whether this particular site conforms to the criteria found in 10 CFR Part 100.

Once again, the Staff wishes to emphasize, as it has in response to Contention 1, that both the PID and supplements to the SER and the FES in this proceeding have considered, in detail, demographic data both for the present and as projections throughout the life of the proposed plant. The petitioners have stated no basis upon which to challenge the analyses either in the PID or in the Staff documents, and therefore the Board should refuse to admit this contention as an issue in controversy in this proceeding.<sup>2/</sup>

Mr. and Mrs. J. Morgan Bishop

Contentions 4 through 9

As the Staff understands these contentions, the Bishops are concerned about the effects of a postulated rupture from two specific pipelines which are located in the vicinity of the proposed facility. The first is a twenty-four inch natural gas pipeline which is owned by the Texas Utilities Company and carries pressurized natural gas. When this line is finally positioned, it will pass about 9300 feet from the nearest proposed plant seismic Category I structure (the ultimate hear sink structure. Contentions 4, 5, 7, 8 and 9 appear to concern themselves with this 24 inch natural gas pipeline.

Contention 6, however, is concerned with the effects of detonation of gas from a ruptured liquid petroleum gas (LPG) line on the plant. The Staff assumes that the

---

<sup>2/</sup> Indeed it is worth noting that as explained in Regulatory Guide 4.7, the Staff evaluates each and every site, including those sited by the petitioners on the same basis; namely, if the projected population density over the lifetime of the facility exceeds 1,000 persons per square mile, averaged over any radial distance out to 30 miles, special attention should be given to consideration of alternative sites with lower population densities. The predicted 30 mile population density in the year 2020 for this particular facility can be calculated to be only 80 persons per square mile. See Table S.2.2, FES Supplement.

petitioner is referring to the six inch LPG line owned by the Shell Pipeline Company, which at its closest approach is about 7000 feet away from the nearest seismic Category I plant structure.

Taken together, contentions 4 and 5 allege that there will be an impact on the area population due to relocation of the 24 inch natural gas pipeline. These contentions appear to be based solely on conjecture concerning the stability of the soil along the rerouted line and the possibility of floods, which they allege would increase the probability of pipeline rupture. However, there is no indication that, for instance, soil conditions along the relocated pipeline are any more unstable than those where the pipeline is presently located. No fact or basis is given in support of the assertion that the river could enlarge its channel and "undercut" the pipeline, and the assertion is no more than speculation. Indeed, the Bishops have made no case that there will be any greater danger of pipeline rupture at the new pipeline location than along any other potential route, including the present pipeline location. In fact, there is nothing in these contentions which would suggest that there is any hazard to the local populace in the event of pipeline rupture along the route on which the pipeline is to be relocated. Therefore, the Staff believes that contentions 4 and 5 must be rejected by the Board.

In contention 7 the Bishops allege that since the natural gas pipeline will be relocated so as to place it near the cooling lake dam, the line could burst and through explosion or erosion breach the cooling lake dam, and (1) kill people in the local area and destroy property due to flooding; and (2) leave the facility without adequate cooling water. Once again, this contention is

1293 247



purely conjectural; the petitioners provide no data to support the bare assertion that a gas explosion either could occur or could provide the force necessary to cause a breach in the cooling lake dam. It is not at all clear what "erosive force" the petitioners have in mind, or how this force could erode the dam. (The petitioners do not contend that the pipeline will be beneath the cooling lake dam). Absent this information, the assertion that there would be property damage and loss of life due to flooding as a result of relocation of the natural gas pipeline is pure speculation. With regard to the Bishop's assertions concerning a safety impact on the proposed facility, it should be noted that this Board specifically found, in the PID, para. 85, 2 NRC at 799, that when relocated, this pipeline "will pose no safety hazard to the plant." That finding was based on testimony of both the Applicant and the Staff. In addition, in order to assure itself that that finding remains valid, the Staff has reevaluated all the pipelines in the vicinity of the plant and, in Supplement No. 2 to the SER prepared for this application (in Section 2.2.4) the Staff concludes that the natural gas pipeline "does not pose a hazard to the safe operation of the plant." The Bishops have alleged nothing specific which would call either for a reevaluation of this Board's findings in the PID, or a reassessment of the Staff conclusion in Supplement 2 to the SER. Therefore, the Staff believes that contention 7 should be rejected by the Board.

Contentions 8 and 9 assert, without any underlying basis whatsoever, that the Applicant has underestimated the effects of detonation of gas from the natural

1293 248

gas pipeline in the event of a rupture of that line. The Bishops assert only that the Applicant's "assumptions on yield, point of ignition and volume of escaped gas are all conjectural." However, they offer no explanation for that allegation. As such, these contentions do not meet 10 CFR §2.714 which requires that contentions state with particularity a basis for the allegations contained therein, and therefore these contentions should be rejected by the Board.

Contention 6 deals with the liquid petroleum gas (LPG) pipeline owned by the Shell Pipeline Company which is discussed in Supplement 2 to the SER, in Section 2.2.4. The Bishops allege that the Applicant has underestimated the effects of detonation of gas from this pipeline. While the contention lacks any basis for the petitioners' assertions that the Applicant's "assumptions on yield, point of ignition and volume of escaped gas are all conjectural," the Staff, in the cited section of the SER Supplement, agrees with the petitioner that "the Applicant's analyses to date have not demonstrated the assurance . . . that the postulated event [the rupture of the LPG pipeline] may not be considered as a design basis event." The Staff goes on to state in the same section of the SER Supplement, that:

If such assurance cannot be demonstrated, our position is that physical changes to the site and/or environs to provide such assurance are necessary. In response to this position the Applicant has committed to make such changes if the Staff does not find that the Applicant's future analyses provide the requisite assurance. Our experience suggested several acceptable physical changes are possible, as for example, relocation such as the Applicant has demonstrated in the case of the 24 inch line that is to be relocated from the vicinity of the site, or providing interception dikes or revetments to prevent dense propane gas from overflowing plant structures.

1293 249

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, physical measures to cope with the potential hazard. Specifically, the Applicant has committed to relocation of the pipeline if it cannot demonstrate by analysis or other alternate physical measures, acceptable resolution of this matter. We find this commitment acceptable and can recommend granting of a construction permit prior to ultimate resolution of this issue because construction of the plant can proceed independent of and not foreclose practical resolution of this matter. In addition, during the several years of the plant is under construction, there may be changes in the use of the pipeline that may influence the modifications proposed.

The Bishops have shown no reason why any modifications are necessary at the construction permit stage of review.<sup>3/</sup> They have not taken issue with the Staff's conclusions that such modifications can await the operating license review, if necessary, and specifically have not challenged the Staff's reasons for believing that it is reasonable and appropriate to await later developments before determining whether any relocation of the LPG line is necessary. Therefore, the Staff believes that this contention should not be admitted as a matter in controversy by the Board.

#### Contention 10

The Bishops assert that the Applicant's statement that there are no sources of corrosive liquid or oil upstream of the plant on the Brazos River is incorrect. They contend that there are numerous pipelines "carrying a variety of potentially dangerous substances" upstream of the plant on the Brazos River. The Board should reject this contention since (1) the Bishops have failed to identify any of the pipelines about which they speak or to identify any of the substances carried by those pipelines which could cause the hazards to the plant which they hypothesize; and (2) their assertions concerning the postulated impacts

---

<sup>3/</sup> See Florida Power & Light Co. (Turkey Point Nuclear Generating Units 3 & 4), Commission, 4 AEC 9, 14-17 (1967), Gulf States Utilities Co. (River Bend Station, Units 1 & 2), ALAB-444, 6 NRC 760, 776-778 (1977).

on the plant from the rupture of one of these unidentified pipelines is purely conjectural and supported by no basis whatsoever. Therefore, the Staff believes that this contention should be rejected by the Board.<sup>4/</sup>

#### Contention 11

The petitioners assert that it is possible that the Brazos River will change its course at some time in the future and that if it does so river water may no longer be available to cool the plant and it would have to be shut down. For that reason, the petitioners allege that the plant should be moved to a river less likely to change course or to the Gulf of Mexico. The possibility that there may not be enough cooling water at some time in the future because of a changing course in the Brazos River is so speculative that it could not be intelligently addressed by either the Staff or the Applicant. Further, petitioners have not supplied a basis for their implication that there are other rivers less likely to change course than the Brazos River. Therefore since the contention is based on pure speculation and lacks a particularized basis as required by 10 CFR §2.714, it should be rejected as an issue in controversy.

---

<sup>4/</sup> While not directly responsive to the concern about specific upstream pipelines, the Staff notes that this Board, in the PID, para. 87, 2 NRC at 800 discussed nearby industrial facilities, including a large crude oil storage facility 6 miles NNW of the proposed site and concluded that "the effect of an industrial accident or an inadvertent chemical release need not be considered in the design of the proposed plant." The Board's overall conclusion with regard to effect of nearby activities, including the identified pipelines, on the proposed facility was that "there are no nearby activities that would preclude site acceptability." PID, para. 88, 2 NRC at 800.

Contention 12

The Bishops contend that significant seepage from the cooling lake will transport radioactive materials to an aquifer that will supply drinking water to area residents, and that (1) the amount of water that could be ingested by area residents has not been considered; and (2) that the Allens Creek construction permit should be denied until it is demonstrated that "no radioactive material will ever reach any area resident.

The petitioners are obviously unaware that the Staff has indeed considered seepage from the cooling lake. The Staff's estimate for the initial two unit plant and larger lake was that seepage of 1000 acre feet per year would extend to a zone of influence extending approximately 1000 feet from the perimeter of the cooling lake over the 40 year plant lifetime (FES Section 5.2.2). The Staff concluded in Section 5.4.2.2 of the FES that "there are no drinking water supplies within 58 miles of the plant that could be affected by the plant liquid effluents," and that "under normal operating conditions no potential exists for ground water contamination." The FES Supplement (Table S.5.1) notes that seepage from the smaller single unit lake will be only 600 acre feet per year, and that the impacts will be less than predicted for the larger lake (FES Supplement, Section S.5.2). In addition, the Staff has gone on to calculate the radiological impacts resulting from drinking cooling lake water. The Staff concluded that the radiation doses resulting from drinking this water would be less than 0.1 millirem per year (FES Supplement, Table S.5.13). Radiation doses from ground

1293 252



water would be less than this. Compared with the average annual background radiation dose of 92 millirem per year for the State of Texas (FES Supplement Table S.5.14), the Staff concluded that this dose would be insignificant. The Bishops offer no basis for challenging any of these Staff conclusions, nor for believing that any doses to individuals in the vicinity of the proposed facility will exceed the limits set forth in Commission regulations. Therefore, there is no basis upon which to admit this contention as an issue in controversy.

Contention 14<sup>5/</sup>

The petitioners challenge the comparison of the coal and nuclear alternatives by the Applicant ( and presumably by the Staff) and assert that the conclusion that nuclear power was preferable from both an economic and environmental standpoint was based on "inaccurate data." However, they failed to identify any of the data which they alleged to be inaccurate nor to assert any information which they believe demonstrates that the coal alternative is superior to the nuclear alternative. Further, the Staff has analyzed and compared coal fired plants versus the Allens Creek facility from both the economic and environmental standpoints in the FES Supplement (Sections S.9.1.2.1 and S.9.1.2.3 and Appendix S.D), and the Bishop have offered no reason to believe that any of the analyses contained in the cited sections is inaccurate in any manner. Therefore the Staff believes that this contention should be rejected by the Board, since the petitioners have offered no basis for their assertions, as required by 10 CFR §2.714.

<sup>5/</sup> The Supplement to the Bishop's petition for leave to intervene contains no contention numbered 13. There is simply a note that this contention will be submitted at a later date. Time for submitting contentions has now expired.



Contention 15

The petitioners allege that the Applicant's consideration of surface faulting at the proposed site is inadequate to protect the public health and safety. However, they provide no basis for their assertions that the geological and seismological analyses that have been done to date are inadequate. More importantly, this Board extensively considered the question of faulting on the proposed site in the PID in paragraphs 108 through 112 (2 NRC at 804-806) and found that the extensive investigations that had been done did not alter its view with regard to the suitability of the proposed site for the construction of a nuclear facility. The Bishops have provided no information which would dictate that a reassessment of these Board findings is in order, and therefore the contention should be rejected.

Contention 16

The Bishops contend that the Applicant has failed to consider the most serious flood condition at the plant site which they assert would be the impact from a probable maximum flood event coupled with the probable maximum hurricane. They predict dire safety consequences should these events occur simultaneously and allege that they should be evaluated.

The petitioners have obviously not reviewed either the SER, the PID, or Supplement 2 to the SER prepared for this application. If they had done so, they would know that the Staff evaluated in the original SER a probable maximum hurricane coincident with severe flooding on the Brazos River, and that this Board, in the PID, specifically noted that these simultaneous events had been

evaluated and that "flood conditions at the site can be acceptably taken into account and the design of the facility in a manner that assures the integrity of all safety related structures, systems and components." PID, para. 91, 2 NRC at 800-801. Finally, the Staff has further analyzed the question of flood potential in Section 2.4.2 of Supplement 2 to the SER. The Bishops have offered no information which would negate any of the analyses done by the Staff or Applicant nor any of the findings made by the Board in the PID. Therefore, there is no basis upon which to admit this contention as an issue in controversy.

Contention 17

The Bishops assert that the Applicant has inadequately analyzed the impacts associated with a postulated railroad accident involving hazardous materials, including TNT and chlorine gas. Once again, it is obvious that the petitioners have failed to review either the SER or the PID, both of which address this concern. Specifically, the Staff evaluated railroad accidents in Section 2.2 of the SER (November, 1974) and this Board concluded, after hearing testimony on the issue at the original hearings that:

The Staff has evaluated the effects of major accidents occurring either on the highway or the railroad and has concluded that these potential hazard sources need not be considered in the design of the proposed facility . . .  
PID, para. 86, 2 NRC at 799.

The Board obviously took that information into account when it concluded that "on the basis of the above considerations, the Board concludes that there are no nearby activities that would preclude site acceptability." PID, para. 88, 2 NRC at 800.

The Bishops provide no information which takes issue with either the Staff analysis in the SER or the Board's findings in the PID, and therefore this contention should be rejected.

Contention 18

The Bishops assert that, given the fact that "there is a high likelihood of a commercial airport being built in the near future in close proximity to the plant . . .," the facility is not adequately designed for aircraft impact. Although the contention is devoid of any basis for their assertion that the facility is not adequately protected against such an occurrence, the Staff notes that the subject matter of aircraft impact forms the basis for a contention which has already been admitted by the Board as an issue in controversy as TEXPIRG contention 6. Therefore the Staff would have no objection to the participation of the Bishops on this issue subject to the requirement that they consolidate with TEXPIRG.

Contention 19

The Bishops contend that the cooling lake will result in fogging that will impact visibility on highways and railways, that the facility should be re-designed to eliminate this impact, that the Applicant's calculations of fogging conditions are not correct for all cases and that the impacts could be significantly greater than those indicated by the Applicant. Once again, it appears that petitioners have failed to review both the FES and the Supplement to that document, for if they had done so they would know that, in Section 5.6.8 of the FES and in Section S.5.5.1 of the FES Supplement, the

potential for ground fogging was specifically considered. The petitioners provide no information which would negate the Staff's conclusion that this impact will be minimal. Further, they do not allege that there is any other cooling facility that will result in less potential for fogging than the proposed cooling lake. Therefore, this contention should be rejected by the Board.

Contention 20

The petitioners contend that the plant is susceptible to damage by a lightning strike and that a direct hit by a large lightning bolt could seriously affect the ability of the plant to operate safely. The contention should be rejected as vague, there being no explanation as to what affects the petitioners predict from a lightning strike. Further, there is no explanation or basis for the petitioner's assertion that the plant's ability to shut down safely in the event of such an occurrence would be compromised. Therefore, there is no basis upon which to admit this issue as a matter in controversy.

Contention 21

The petitioners contend that the proposed cooling lake will contain radioactive material that will be hazardous to the people using the lake and that therefore, the lake either should not be built or that public access to it should be banned. Finally, the petitioners contend that a cooling tower would be a preferable alternative.

1293 257

With regard to the Bishops' assertions concerning radiological impact to users of the lake from effluents released to that water body, the Staff has analyzed the radiological impacts associated with releases to the cooling lake in the FES Supplement, Section S.5.4.2.2 and concluded that the impacts would be minimal. Specifically, the Staff estimated the annual dose commitments to the maximum individual from liquid releases to the cooling lake. The Staff defined the maximum individual as an adult "who consumes fish harvested from the cooling lake, drinks water from the cooling lake, and uses the shore line of the lake for recreation." The dose to this maximum individual was then calculated by the Staff to be approximately 1.4 millirems per year, which is well within the criteria set forth in 10 CFR Part 50, Appendix I. The petitioners have alleged nothing which could form the basis of a challenge to that Staff analysis.

With regard to the petitioner's preference for a cooling tower as an alternative to the proposed cooling lake, this Board has already considered cooling system alternatives in the PID and concluded that the cooling lake was the preferable alternative. PID paras. 63 and 64, 2 NRC at 792-793. The Bishops have alleged nothing which would dictate the need for a reassessment of that Board finding.

For the reasons stated above, this contention should be rejected.

1293 258

Contention 22

The Bishops contend that the cooling lake is larger than necessary for one facility, and assert that it should be redesigned so as to preclude unnecessary land use. The Staff notes that the lake has already been reduced in size subsequent to the cancellation of the second proposed unit at the Allens Creek site. In addition, the Staff has discussed the question of land use and evaluated the quality and quantity of acreage which will be removed from agricultural production by virtue of the construction of the proposed lake. The Staff has concluded that the land which will be removed from production as the result of construction of the facility and the cooling lake "represents a very small percentage of the total prime and unique farm land in Texas." FES Supplement, Section S.4.1.3. The petitioners have alleged no adverse impacts from the removal of the land to be used for the proposed cooling lake, and therefore the Staff does not believe that any litigable issue is created by this contention, and that it should be rejected.

Contention 23

The Bishops contend that the following alternative sites are preferable to Allens Creek: (a) the South Texas site, (b) an offshore site, (c) a site utilizing salt water for cooling or located near the Gulf of Mexico, and (d) the lower Mill Creek site. With regard to the Bishop's proposed alternatives (a) and (c), those alternatives have already been suggested in contentions which are admitted issues in this proceeding (TEXPIRG contention 1 and



Hinderstein contention 5). Therefore, the Staff has no objection to the Bishop's participating in the hearing on these issues provided that they be required to consolidate with TEXPIRG (South Texas site) and Miss Hinderstein (salt water site).

With regard to the petitioners' suggestion that an offshore location provides a superior alternative to the Allens Creek facility, it should be noted that such a suggestion involves the future implementation of a unique siting option which has not yet been licensed by the Nuclear Regulatory Commission and which the Bishops have not alleged would be available in the time frame in which the Allens Creek facility is needed. Therefore, the Staff believes that this portion of the contention should not be admitted as an issue in controversy in this proceeding.

Finally, with regard to the Lower Mills Creek site, the Staff has concluded (FES Section 9.1.2.1.3) that this site, while acceptable for nuclear power plant siting, offers no advantages that would make it preferable to the Allens Creek site. For example, the Staff has concluded, in the cited section, that the population densities for the area surrounding the lower Mill Creek site would be very similar to the Allens Creek site and this Board has determined in the PID that there will be no significant land use impacts at the proposed site (PID, paras. 65-78, 2 NRC at 793 to 797) and that there will be no flood hazard at the Allens Creek site. (PID, paras. 26-33, 2 NRC at 784 to 785). Except for their unsupported and conclusory assertions that these impacts will be

1293 260

less at the lower Mill Creek site, the petitioners have alleged nothing specific which would negate any of the Staff conclusions in the FES, or this Board's findings in the PID. Therefore, the contention should be rejected as an issue in controversy.

Dorothy Carrick

Contention 1

Ms. Carrick contends that the Allens Creek facility will pose a danger to her in the form of escaping radiation or a core melt down. To the extent Ms. Carrick is contending that the radiological doses from the routine operation of the proposed facility will not comply with the Commission's regulations, she has provided no basis for such a statement. In this regard it bears emphasizing that the Staff has analyzed the radiological impacts from routine operation in the FES Supplement (Section S.5.4) and concluded that these impacts are well within the limits set forth in the Commission's regulations, specifically 10 CFR Part 50, Appendix I. Ms. Carrick does not challenge those conclusions. If her contention is that the dose limits set forth in Appendix I are too high, this constitutes a challenge to that regulation, which may not be entertained by this Board absent a showing, not made here, of special circumstances pursuant to 10 CFR §2.758.

To the extent that Ms. Carrick is asserting that this Board must consider the consequences of a core melt (a Class 9 accident) at the Allens Creek facility, she has alleged no special circumstances which dictate that such an event need be considered for the proposed plant. See Offshore Power Systems, supra. Therefore, the consequences of a Class 9 accident may not be

considered by this Board for reasons further developed in the Staff discussion of Bishop contention 1, supra.<sup>6/</sup> This contention should be rejected.

### Contention 2

The petitioner contends that the cooling lake dam will block the Brazos River overflow and create a flooding hazard. However, she provides no basis for her allegation that a flood hazard would be created by the dam which will be constructed as part of the Allens Creek cooling lake design. More importantly, the subject of possible flooding and its impacts were specifically dealt with in the PID in this matter and Ms. Carrick has established no reason which would dictate a reassessment of the findings made by this Board in that decision. PID, paras. 26-33, 2 NRC at 784-786. Indeed, the size of the proposed cooling lake has been substantially reduced from that which was originally envisioned for two units; it would seem, therefore, that the flood potential would be even less with the currently sized lake. Therefore, Ms. Carrick has asserted no basis for the contention and it should be rejected by the Board.

### Contention 3

Ms. Carrick complains about the lack of a permanent solution to the waste disposal problem. This issue is clearly not litigable in this proceeding since, as this Board has previously recognized, the Court in Natural Resources Defense Council 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 of future applications to nuclear power

---

<sup>6/</sup> It is again noted that the issue of the consideration of Class 9 accidents will be considered by the Commission in the context of the continued rulemaking proceeding, and the Intervenor may seek to forward comments in that proceeding if they wish. See p. 7, supra.

reactor licenses until it makes a determination that high level radioactive waste can be permanently disposed of safely. See, this Board's "Order Ruling Upon Intervention Petitions," dated February 9, 1979, p. 27.

It should be noted, however, that in the 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.

#### Contention 4

The petitioner contends that the South Texas site offers a superior alternative to the proposed site for the construction of a nuclear power facility because of the (1) lower population surrounding the South Texas site, (2) the fact that the Allens Creek site is currently a virgin site whereas there is already construction activity at the South Texas site, and (3) that the construction of an additional plant at South Texas would require no additional water usage. The Staff has no objection to the admission of this contention as an issue in controversy, but we note that a similar contention has already been admitted as TEXPIRG contention 1, and we would urge the Board to require that Ms. Carrick consolidate with TEXPIRG on this issue.

1293 263

Contention 5

Ms. Carrick alleges that a cooling tower is a preferred alternative to the proposed cooling lake because the tower would involve less water usage and would not exacerbate the subsidence problem in the Houston area. In addition, she asserts that the tower would be less expensive, use less land and present less of a radiation hazard as well as eliminating the flood hazard which the cooling lake presents.

With regard to the flood hazard proposed by the cooling lake, the Staff refers the Board to its response to Ms. Carrick's contention 2 above. With regard to her other assertions of environmental superiority of cooling towers over the proposed cooling lake, the Staff notes once again (see discussion of Bishop contention 21, supra) that this Board considered several alternative cooling designs in the PID in this matter and determined that the cooling lake was the preferred alternative. PID, paras. 63 and 64, 2 NRC at 792-793. Ms. Carrick has provided no information which would dictate the need for reassessment of that Board finding. Further, with specific regard to the problem of subsidence, this matter has been extensively considered in the SER at p. 2-36 and in Supplement 1 thereto at pp. 2-23 to 2-50. In addition, in paras. 113-121 of the PID, this Board discussed the matter of subsidence and found, inter alia, that subsidence on the scale experienced in the Houston area will not occur at the site because of a variety of geological and other dissimilarities, that ground water withdrawals will not cause ground failure at the site, and that the Applicant's monitoring program could detect subsidence long before such subsidence presented a safety hazard. 2 NRC at 806-809.

1293 264

For all of the reasons stated above, the Staff believes that this contention should be rejected as an issue in controversy.

Carolina Conn

Contention 1

Ms. Conn contends that a coal plant would be a preferable alternative to a nuclear plant for the Allens Creek site largely on the basis of her assertion that "economically a coal plant would very nearly compare in costs . . ." with a nuclear facility. The contention is barren of any allegation of environmental superiority of coal over nuclear power except for a vague assertion that "the general risk to the local citizen and the outer area citizens is greatly altered and reduced." As discussed, supra (Bishop contention 14), the Staff has done an extensive analysis and environmental comparison of the coal versus nuclear option in the FES Supplement in Sections S.9.1.2.1 and S.9.1.2.3 and in Appendix S.D. Ms. Conn alleges nothing which challenges any of the Staff's analysis or its conclusion that from an environmental standpoint nuclear power is preferable to a coal fired plant. That being the case, we are left simply with her assertion that the nuclear and coal options compare closely when economic cost is considered. However, as the Appeal Board emphasized in Consumers Power Company (Midland Plant, Units 1 and 2) ALAB-458, 7 NRC 155, 162-163, the economic cost of an alternative need not be considered in the absence of a showing that it is environmentally superior to the proposed nuclear facility. Therefore, while the conclusions of the Staff's economic analysis in the FES Supplement (Sections S.9.1.2.1 and



S.9.1.2.3) are contrary to Ms. Conn's assertions regarding the economic advantages of coal when compared to the nuclear option, the contention must be rejected by this Board in any case, since there has been no supported allegation of environmental superiority of the coal fired alternative vis a vis nuclear power.

Contention 2

Ms. Conn alleges that the South Texas site is a superior alternative to the Allens Creek site for the construction of a nuclear generating facility because (1) the population density around the South Texas site is less than that around the proposed site; (2) the cooling system at the South Texas site is already large enough to accommodate an additional unit, whereas additional water usage would be required at the Allens Creek site for this purpose; and (3) an additional unit at the South Texas site would require the use of much less land than the construction of a similar facility at the Allens Creek site.

The Staff has no objection to the participation of Ms. Conn on this issue provided that she required to consolidate with TEXPIRG and the other petitioners who have similar concerns.

Contention 3

The petitioner alleges that the construction permit for the proposed facility should be denied because of the possibility of accidents during the transportation of radioactive materials. As this Board has already ruled, in denying similar

1293 266

contentions in its "Order Ruling Upon Intervention Petitions," dated February 9, 1979:

§51.20(g)(1) [of 10 CFR] and Table S-4 of the Commission's regulations prescribe the environmental impacts of transportation of fuel and waste to and from the reactor, and 10 CFR 71 and §73.30-73.36 of the regulations set forth requirements to assure adequate protection. Further, to the extent the petitioners allege that said regulations are inadequate, these two contentions constitute impermissible challenges to the regulations, absent a showing of special circumstances. 10 CFR §2.758. The contentions are inadmissible. (p. 31).

The Staff therefore believes that this contention should be rejected by the Board.

#### Contention 4

Ms. Conn asserts that until a solution is found for the problem of long term waste disposal, all permits for a nuclear facility should be denied. For the reasons stated in response to Carrick contention 3, supra, the Staff believes that this contention should be denied.

#### Elinore Cumings

#### Contention 1

Ms. Cumings alleges that the Applicant's are not financially qualified to construct the proposed facility "as noted in recent hearings requesting a rate increase." Obviously, this contention is vague and totally without any supporting basis for the allegation that the Applicant lacks the necessary financial qualifications to design and construct this facility. See pp. 1-4, supra. Ms. Cumings

neither identifies the hearings which she cites in the contention nor alleges anything specific which occurred at those hearings which would create a doubt with regard to the ability of the Applicant to finance the proposed project. The Staff believes that this contention should be rejected by the Board.

Contention 2

The petitioner alleges that the Applicant's and Staff's assessment of the need for the power to be generated by the proposed facility is inaccurate due to (a) failure to take into account the impact of large lignite plants being built north of Houston, (b) failure to account for the impact of energy conservation, (c) failure to consider the effects of alternate price designs, and (f) failure to provide for "complete internalization of all significant external costs so that the total cost of electricity is charged to those using it."

To the extent that Ms. Cumings alleges a failure to take into account the recently announced plans to build lignite plants north of Houston in the need for power analysis for the proposed facility, the Staff believes that this contention complies with the requirements of 10 CFR §2.714 and should be admitted as an issue in controversy.

With regard to subpart (b) of this contention, Ms. Cumings is simply mistaken concerning the allegation that energy conservation was not considered by the Staff. This issue was extensively analyzed by the Staff in the FES Supplement

in Section S.8.2.3 and the petitioner alleges no specific inadequacies in that analysis. Therefore the Staff believes that this portion of the contention has no basis and should be rejected.

Subpart (c) of Ms. Cumings' contention again demonstrates that she has not reviewed the FES Supplement since that document specifically considers the affects of alternative price designs in the analysis of the need for power in Section S.8.2.4. Once again, the petitioner fails to challenge any specific portion of that Staff analysis. There is thus no basis upon which to admit this portion of the contention as an issue in controversy.

Finally, subpart (d) of contention 2 is so vague and non-specific that the Staff cannot address it intelligently. The contention is incomprehensible as stated and should be rejected by the Board. See Vermont Yankee Power Corp. v. NRDC, 425 U.S. 519 (1978).

### Contention 3

Ms. Cumings alleges that there has been no consideration in the Staff's environmental analysis of the radiological impacts associated with the use of Brazos River water, which she implies will be dangerous to use as a result of radioactive effluents from the proposed facility. Once again, the petitioner has obviously not reviewed the FES Supplement, since in Section S.5.4.2.2 the Staff considers the estimated annual radiation dose commitments to the population within 50 miles of the Allens Creek plant from liquid releases, based on the use of the cooling lake and Brazos River water (for recreation, sports fishing,

commercial fishing and irrigated foods). These dose commitments are presented in Table S.5.1.4 of the Supplement. Further, the impacts from drinking water were based on ingestion of cooling lake water (Table S.5.13), which would provide a greater dose than would result from drinking Brazos River water. Ms. Cumings has not alleged any specific inadequacies in this Staff analysis and therefore the contention should be rejected.

#### Contention 4

Petitioner alleges that the South Texas site is superior to the Allens Creek site for construction of a nuclear plant because (a) the greater water supply at the South Texas site; (b) the Allens Creek site is plagued by a subsidence problem from the falling water table; and (c) the projected population around the South Texas site is far less than that around the proposed site. The Staff believes that this contention should be admitted as a matter in controversy on the condition that the petitioners' presentation on this issue be consolidated with that of all other petitioners who have raised this issue. We believe, however, that no evidence should have to be presented on the subsidence question for the reasons stated in our discussion of Carrick contention 5, supra.

#### Contention 5

This contention amounts to an assertion that the Allens Creek facility will produce an unnecessary amount of radiatio... There is no basis upon which this Board could admit this issue as a matter in controversy; the Staff has done an extensive analysis and it has determined that radiation releases and resultant

doses are capable of meeting the dose design requirements of 10 CFR Part 50, Appendix I. That analysis appears in the FES Supplement in Section S.5.4.4. The Staff has concluded that there will be no measurable radiological impact on man from routine operation of the plant. Indeed, in Section S.5.4.2 of the FES Supplement, the Staff concludes that the overwhelming majority of radioactive releases from the plant are noble gas radionuclides (Table S.5.10) which contribute essentially no total body dose commitments to individuals and the population within 50 miles of the proposed site. The petitioner does not contest any of these Staff conclusions or any portion of the Staff analysis, and consequently the contention has no basis and should be rejected by the Board.

#### Contention 6

Ms. Cumings alleges that the following alternative forms of energy have not been adequately evaluated: (a) the burning of sour gas; (b) the use of solid waste combustion; (c) the use of solar energy which she asserts "is becoming more practical each day as new technology services in both passive and active forms for residential and industrial use."; (d) the use of hydroelectric and wind power.

The petitioner offers no basis upon which to believe that any of the alternative forms of energy which she sites would be a viable replacement for the 1200 megawatts of electricity which the Allens Creek facility will generate in the time frame of interest. For example, with regard to sour gas, the petitioner gives no indication as to the amount of sour gas that would be available for energy generation,



the assumed availability of this source of energy for the next thirty years, or the amount of electrical energy that this quantity of gas could produce. With regard to the alternatives cited in subsections (b), (c), and (d) of the contention, the Staff has considered each of the alternatives mentioned in the FES Supplement (Sections S.9.1.2.1 and S.9.1.2.2) and the petitioner has alleged nothing which would challenge the Staff analysis in those sections. Therefore, the contention amounts to pure speculation that the alternatives which Ms. Cumings raises will be available in the time frame in which they are needed to replace the generating capacity which the Allens Creek facility will provide.

However, the Staff notes that the availability of alternative (b) (solid waste combustion) and a portion of alternative (c) (passive solar techniques) have already been admitted as issues in controversy in this proceeding. See TEXPIRG contentions 4 and 7(d). Therefore, the Staff would have no objection to the admission of these two allegations as issues in controversy provided that Ms. Cumings be required to consolidate with TEXPIRG.

Contention 7

Ms. Cumings asserts that the comparison of coal versus nuclear power in the Staff's NEPA evaluation is inaccurate because of the Staff's failure to consider "total costs versus total benefits" and because "if health financial security legal operating and building costs are considered then nuclear energy is very costly." As discussed, supra (Conn contention 1, Bishop contention 14), the coal alternative was extensively considered by the Staff in comparison

to the nuclear alternative in the FES Supplement, in Sections S.9.1.2.1 and S.9.1.2.3, and in Appendix S.D of the same document. The petitioner gives us no clues as to what errors she perceives in the Staff's comparison of coal versus nuclear and does not identify what factors were omitted from that analysis which she believes to be significant. Similarly, the petitioner fails to identify any of the health, financial, security, legal, operating or building costs which she alleges were not considered by the Staff. In short, the petitioner has failed to challenge any specific portions of the Staff analysis with regard to the comparative advantages and disadvantages of coal versus nuclear power and therefore the contention should be rejected as lacking the basis required by 10 CFR §2.714.

Contention 8

Ms. Cumings joins the large group of petitioners which is concerned about the lack of a solution to the waste storage problem. However, for the reasons stated in response to Carrick contention 3, this concern presents no issue which is litigable in this proceeding.

Contention 9

Ms. Cumings asserts that further study needs to be made of all ramifications of low level radiation emission." She appears to be implying that the dose limits set forth in the Commission's regulations are not adequate to protect the public health and safety. If so, the contention is a challenge to Commission regulations which may not be entertained by this Board absent a showing, not made here, of special circumstances pursuant to 10 CFR 2.758. Therefore, the Staff believes that there is no basis upon which to admit this issue as a matter in controversy.

1293 273

Stephen Doggett

Contention 1

Mr. Doggett asserts that adequate consideration has not been given to the availability, cost and lesser environmental impact of the following alternative energy sources: (a) heavy crude, oil and tar sands, and gasohol, (b) solar power, (c) coal, (d) biomass, (e) hydropower, and (f) conservation.

The Staff believes that this contention should be rejected because it is based largely on speculation concerning the availability of the identified alternatives in the time frame in which the power from the Allens Creek facility is needed. It is important to note that the petitioner makes no allegation whatever that any of the identified alternatives will be available in the time frame of interest. As the Appeal Board has recently stated, in Public Service Electric and Gas Company, et al. (Hope Creek Generating Station, Units 1 and 2) ALAB-518, 9 NRC 14, 38 (1979):

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 Corp. v. Natural Resources Defense Council, 435 U.S. 519, 551 (1978).

Further, petitioner never acknowledges that the Staff has analyzed each of the alternatives which he identifies in the FES Supplement in Sections S.9.1.2.1, S.9.1.2.2, and S.9.1.2.3 as well as Appendix S.D. He has not pointed to any specific portion of the Staff analysis with which he disagrees. To cite one example, Mr. Doggett discusses the comparative economics of the coal option versus the nuclear option at pages 4-5 of his petition, but has apparently not

reviewed the extensive Staff analysis of both the environmental and economic costs of coal versus nuclear power in the FES Supplement, and he does not take issue with any of the Staff conclusions with regard to that comparison.

However, to the extent Mr. Doggett asserts that conservation has not been given adequate consideration by either the Applicant or the Staff, Staff notes that this contention has already been admitted by the Board as TEXPIRG contention 7, and therefore the Staff would have no objection to Mr. Doggett being consolidated with TEXPIRG on this issue.

Contention 2

The petitioner asserts that the South Texas site is superior to the proposed site for the construction of a nuclear generating station because (1) the population density around the South Texas site is lower than that at Allens Creek, (2) land and water use would both be less at the South Texas site, and (3) nuclear units are already being built at the South Texas site whereas the Allens Creek site is a so-called "virgin" site. The Staff notes that several other petitioners and TEXPIRG have also raised this issue, and we have no objection to Mr. Doggett being consolidated with the other parties who have raised the issue.

Contention 3

The petitioner contends that the present quality assurance/quality control process of the Applicant is inadequate to insure the public health and safety,

1293 275

as evidenced by the Applicant's poor construction record and that of the contractors to whom it employs at the South Texas site. The petitioner cites several examples which he contends demonstrate inadequacies in the quality assurance program of the Applicant. The Staff believes that this contention complies with the requirements of 10 CFR section 2.714 and should be admitted as an issue in controversy, provided that Mr. Doggett be required to consolidate with TEXPIRG, which has recently filed a contention alleging that the Applicant is not technically qualified to construct the Allens Creek facility based substantially upon the same assertions made by Mr. Doggett. See "TEXPIRG's Amendments to Contentions of May 12, 1979," dated September 14, 1979.

#### Contention 4

The petitioner contends that the Applicant is not financially qualified to design and construct the proposed facility. However, aside from raising speculation concerning difficulty in obtaining funds as a result of cost overruns at the South Texas project, the Three Mile incident, etc., Mr. Doggett raises nothing which would call into question either the reasonableness of the Applicant's financing plan or its ability to adapt to changing economic conditions. For these reasons and those further developed in response to Baker contention 1, supra, the Staff believes that this contention should be rejected by the Board.

#### Contention 5

Mr. Doggett asserts that in the event of a "major accident" at the site it would be impossible to evacuate major portions of the greater Houston area population. If by the term "major accident" the petitioner has in mind accidents in those

1293 276

accident classes designated as 1-8, he has not alleged any basis to believe that any evacuation of the greater Houston area would be necessary in the event of such an occurrence. The Staff notes that the recently published NUREG-0396, which is the report of a joint NRC/EPA task force, contains certain recommendations for modification of Commission rules with regard to emergency planning. However, this document does not contemplate any requirements for evacuation planning beyond a 10 mile radius from a nuclear power facility. There is thus no basis upon which to litigate a contention which postulates the need to evacuate any portion of the Houston area, which is much further away.

Finally, if Mr. Doggett contemplates, by the use of the term "major accident," an occurrence generally described as a "Class 9 accident," the contention should be rejected for the reasons discussed at pp. 4-7 in response to Bishop contention 1, supra.

Robin Griffith

In the course of her letter filed with the Commission on September 14, 1979, Ms. Griffith sets forth four unnumbered concerns which she expresses with regard to the proposed Allens Creek facility. First, she expresses a concern about the effects of low level radiation and the potential for resulting cancer or genetic defects. This contention can only be interpreted as a challenge to the Commission's regulations in 10 CFR Part 50, Appendix I and 10 CFR Part 20, both of which establish dose limits for individuals as a result of operation of nuclear power facilities. Absent a showing of special circumstances pursuant

1293 277



to 10 CFR §2.758, the Board may not entertain such a challenge in an individual licensing proceeding. The contention must therefore be rejected as an issue in controversy.

The second concern is that there is not yet a solution to the problem of long term disposal of radioactive wastes. For the reasons given in response to Carrick contention 3, supra, the Staff believes that this contention must be rejected by the Board.

The third concern expressed by the petitioner is that the thermal pollution from the Allens Creek facility will be environmentally unacceptable. However, thermal impacts of plant operation, both in the cooling lake and in the Brazos River were extensively reviewed by the Staff in both the FES (Section 5.5.2) and the FES Supplement (Section S.5.3). The Staff concluded in Section S.10.1.2 of the FES Supplement that "the thermal alteration of the Brazos River is not anticipated to have an adverse effect on aquatic productivity. The thermal alteration of the Allens Creek cooling lake is expected to partially restrict the range of most game fish species and have an adverse effect on their productivity. Thermal shock on planktonic forms entrained in the circulating water intake may reduce the overall productivity of the cooling lake." While recognizing these impacts, the Staff did not find the impacts to be unacceptable. Except to make the conclusory statement that the impacts are unacceptable. The petitioner neither challenges the Staff conclusions nor offers any information from which one could conclude that the Staff analysis is in error in any way. Therefore, the Staff believes that the Board should reject this issue as a matter in controversy.

The final concern expressed by the petitioner is that the cooling lake will be useless as a recreational fishery. This matter has already been admitted as an issue in controversy by the Board (TEXPIRG contention 2 and McCorkle III) and therefore the Staff would have no objection to the participation of this petitioner with regard to this issue on the condition that she be required to consolidate with TEXPIRG and Ms. McCorkle.

Leotis Johnston

Contention I

Although Mr. Johnston mentions the danger to his family in the event of a core melt down, his real concern seems to be that radiation in any amount is a hazard to the public and that therefore the construction permit for the Allens Creek facility should be denied. To the extent that Mr. Johnston is concerned with the consequences of a core melt down (Class 9 accident), the contention should be rejected for the reasons given above in response to Bishop contention 1, supra. To the extent he complains that the regulations do not provide limits on radioactive doses which are strict enough, the contention should be rejected as a challenge to 10 CFR Part 50, Appendix I and 10 CFR Part 20, since Mr. Johnston has made no showing of special circumstances pursuant to 10 CFR §2.758 which would permit such a challenge.

Contention II

Mr. Johnston expresses a concern about possible accidents occurring during the transportation of radioactive materials on one of the Texas interstate highways.

For the reasons given in response to Conn contention 3, supra, this contention should be rejected by the Board.

Contentions III and IV

These contentions express a concern about the limitations of liability in the Price Anderson Act with regard to insurance against nuclear accidents. In addition, the petitioner contends that insurance coverage for accidents at nuclear facilities should be available through private sources and not through the government. With regard to the latter assertion, the petitioner is mistaken in his implication that nuclear liability insurance is not available in the private sector, since there are insurance pools which sell this type of coverage. The petitioners' complaints concerning the limitations of liability in the Price Anderson Act are challenges to that statute (and to 10 CFR Part 140), the constitutionality of which was recently upheld by the U.S. Supreme Court Duke Power Company v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978). As a result, these concerns cannot form the basis for a litigable contention in this proceeding.

Contention V

Joining the large number of other petitioners in this regard, Mr. Johnston asserts that the Allens Creek construction permit should be denied until a permanent storage facility is in place to handle the nuclear waste problem. For the reasons discussed in conjunction with Carrick contention 3, supra, this concern does not form the basis for a contention which is litigable in this licensing proceeding.

Contentions VI and VII

These contentions assert that the South Texas site is superior to the proposed site for the construction of a nuclear power facility because (1) the population density around the South Texas is much lower than that around the proposed site; (2) the Houston area could conserve a large amount of water which it would save by avoiding the construction of the cooling lake at the Allens Creek facility; (3) if the plant were built at the South Texas site the Allens site could revert to farming, ranching and agriculture. The Staff has no objection to the admission of this contention as an issue in controversy provided that the petitioner is required to consolidate with TEXPIRG and the other individuals raising this same concern.

Contention VIII

The petitioner contends that a solid waste combustion facility could possibly meet the energy needs of Houston and could be a way to avoid the construction of the Allens Creek nuclear facility. While this contention in no way complies on its own merits with the requirements of 10 CFR Section 2.714 in that as stated it is speculative and lacks a basis for the assertions made, the Staff has no objection to its admission as an issue in controversy, providing that the petitioner be required to consolidate with TEXPIRG and the other individuals raising this concern.

1293 281

Rosemary Lemmar

Contention 1

Like several other petitioners, Ms. Lemmar complains that the population within a 50 mile radius of the proposed site (both present and projected) is too great to safely site a nuclear power facility. The contention should be rejected for the same reasons discussed in response to Bishop contention 1.

Contention 2

For the same reasons set forth by several other petitioners, Ms. Lemmar alleges that the South Texas site is a superior location to that of the proposed site for the construction of a nuclear power facility. The Staff has no objection to Ms. Lemmar participating in the adjudicatory hearing on this issue provided that she is required to consolidate with TEXPIRG and the other individuals who have raised the same issue.

Contention 3

The petitioner alleges that the construction permit for the Allens Creek facility should be denied because of the complete lack of permanent waste storage locations. For the same reasons discussed in connection with Carrick contention 3, supra, this contention should be rejected by the Board.

Contention 4

The petitioner contends that if more emphasis were placed on conservation, it would be possible to eliminate the need for nuclear facilities in general and

impliedly the Allens Creek facility in particular. While the contention lacks any basis for the implication that the measures which Ms. Lemmar advocates would eliminate the need for the Allens Creek facility, a contention concerning the benefits of conservation has already been admitted by the Board as an issue in controversy (TEXPIRG contention 7). Therefore, the Staff has no objection to Ms. Lemmar participating in the adjudicatory hearing on this issue provided that she be required to consolidate with TEXPIRG and the other individuals raising this concern.

Contention 5

This contention consists of a general concern with the impacts of low level radiation. The contention appears to be based on a premise that the dose levels set forth in the Commission's regulations are not sufficient to protect the public health and safety. As such, the contention constitutes an impermissible challenge to the Commission's regulations in 10 CFR Part 50, Appendix I and 10 CFR Part 20. Since Ms. Lemmar has not alleged any special circumstances pursuant to 10 CFR §2.758 which would allow such a rules challenge, the contention should be rejected.

Contention 6

The petitioner asserts that "solar energy is much preferred and should be given full support." While the Staff agrees that development of solar energy should be given full support, as stated in the FES Supplement, in Section S.9.1.2.2, the Staff does not believe that solar power is a viable alternative to the Allens



Creek facility in the time frame in which that facility is needed. Ms. Lemmar does not challenge that conclusion and therefore the contention provides no issue which is litigable in this proceeding.

Kathryn Otto

By Ms. Otto's own admission, the restrictions in prior notices published by this Board providing opportunities for submission of petitions for leave to intervene had nothing whatever to do with her failure to file an intervention petition under either of those prior notices. Instead, she asserts that the reason she failed to file previously is because she was not aware that the proposed facility was a nuclear facility but assumed that a coal plant was to be constructed at the Allens Creek site. Thus, it appears that, pursuant to the criterion in this Board's "Supplemental Notice of Intervention Procedures," dated June 18, 1979 (44 Fed. Reg. 35062), Ms. Otto's petition may not be granted.

However, in the event that the Board decides to consider Ms. Otto's petition, the Staff believes that the one contention which she has proffered for consideration by this Board does not comply with the requirements of 10 CFR §2.714 and that therefore it should not be admitted as an issue in controversy in this proceeding. Specifically, Ms. Otto makes several general statements asserting (1) that a coal plant is less expensive both to construct and operate than a nuclear plant and that (2) a coal plant is less environmentally harmful than an operating nuclear facility. As discussed, supra, in response to several other contentions, the comparative environmental and economic cost of coal versus nuclear power

were extensively considered by the Staff in the FES Supplement in Sections S.9.1.2.1, S.9.1.2.3, and in Appendix S.D. That analysis concluded that a nuclear facility is preferable to a coal fired power plant from both economic and environmental standpoints; Ms. Otto has alleged nothing specific which challenges the analysis prepared by the Staff in the FES Supplement. Therefore, there is no basis upon which to accept this contention as an issue in controversy in this proceeding.

Frances Pavlovic

Contention 1

Ms. Pavlovic contends that because the 50 mile radii zones of the South Texas project and the proposed Allens Creek facility overlap, the Staff and Applicant have not considered the additional radiation doses to which the populations within the zones will be exposed. Further, the petitioner asserts that the health effects associated with nuclear power have been evaluated without consideration of overlap zones anywhere in the country. This contention should be rejected for several reasons. First, the petitioner fails to assert what additional radiological impact, if any, she foresees as a result of the alleged "overlapping zones," or whether this impact will even be measurable. In this regard, the Staff notes that the radiological effects on man from operation of the Allens Creek facility are analyzed in the FES Supplement, and in Table S.5.14 of that document, the Staff predicts a total body dose for the 50 mile radius area around Allens Creek of 29.72 man rem, which when divided by the 50 mile population of 2,780,000 results in an average total body dose of approximately 0.01 millirem. Ms. Pavlovic presents no information which would indicate that this average dose, if multiplied by any number of practical overlap zone

factors, would be significant when compared either to the dose limits set forth in 10 CFR Part 50, Appendix I or with the Texas state background radiation dose of 92 millirems per person per year. Indeed, if the petitioner is alleging that the Applicant should be required to calculate radiation doses for the purposes of Appendix I by considering the overlap zone, that assertion constitutes a challenge to Appendix I since the dose limits set forth therein apply to individual units. Such a challenge to the regulations may not be entertained by this Board absent a showing, not made here, of special circumstances pursuant to 10 CFR §2.758.

Further, on December 1, 1979, there will be new Environmental Protection Agency regulations going into effect relating to "environmental radiation protection standards for nuclear power operations" (40 CFR Part 190). As stated in the Federal Register notice which discussed the promulgation of these regulations (42 Fed. Reg. 2858, January 13, 1977):

The agency has also concluded that, except under highly improbable circumstances, conformance to these criteria [Appendix I] should provide reasonable assurance of compliance with these standards for up to five units on a site.

It therefore is obvious that if both 10 CFR Part 50, Appendix I and the new Environmental Protection Agency regulations are met with five units on a site, that they will be met with two units on one site and one unit on another site 50 miles away. In other words, the people in the overlap zone would be exposed to far less radiation than that postulated in the aforementioned Federal Register notice.

1293 286

Finally, with regard to Ms. Pavlovic's allegation that the Staff's health effects discussion relating to the comparison between the coal and nuclear options does not consider overlap zones nationwide, she has not asserted that the results of the health effects comparison would be any different if such overlap zones were considered, nor has she made any allegation with regard to the changes in the health effects from nuclear facilities which would result if overlap zones were examined. In any case, since as discussed above there is no reason to believe that there is any significant excess exposure in the overlap zone, any allegation of increased health effects would be pure speculation.

For all of the reasons discussed above, the Staff believes that there is no basis upon which to admit this contention as an issue in controversy.

#### Contention 2

The petitioner appears to challenge the designation of Rosenberg, Texas as the appropriate population center pursuant to 10 CFR section 100.3(c). Instead, Ms. Pavlovic asserts that Sealy, Texas should be designated as the population center, based not upon the population of Sealy itself, but upon the highway traffic in the vicinity of Sealy. This contention should be rejected for several reasons. First, the definition of "population center distance" in 10 CFR section 100.3(c) clearly does not contemplate transient population passing the site on public roadways on a daily basis, but rather a residential population. Therefore, this contention constitutes a challenge to 10 CFR Part 100, and this challenge may not be entertained by the Board absent a showing, not made here, of special circumstances pursuant to 10 CFR §2.758.

Further, the question of the appropriate designation of a population center was considered by this Board in the PID (para. 81, 2 NRC at 798) and the Board determined that Rosenberg was the appropriate population center. The petitioner has presented no information which would dictate the need for a reassessment of that finding. Finally, the Staff, in Supplement No. 2 to the SER, concluded that:

[E]ven if Sealy or Katy were to grow so as to become the nearest population center, the distance from the site to the nearest population center would still be greater than 1-1/2 times the low population zone outer radius of 3.5 miles.

As a result, the Applicant would still be in full compliance with 10 CFR Part 100 site suitability criteria even if petitioner were correct in her assertion that Sealy is the appropriate population center. Therefore, the contention presents no issue which would be litigable in this proceeding, and should be rejected by the Board.

### Contention 3

The petitioner contends that the Allens Creek site is more desirable for agricultural uses than as a nuclear power generating site. This contention should be rejected by the Board, since the issue of land usage at the proposed site was considered by this Board at the time of the original hearing on this application, and the Board concluded that construction of the proposed facility would utilize only a very small percentage of similar land in the state of Texas which is available for cultivation. PID, paras. 65-78, 2 NRC at 793 to 979. No information has been presented by the petitioner which would dictate the need for

a reassessment of that Board finding. Further, the Staff, in the FES Supplement (Section S.4.1.3) has concluded, in an updated assessment, that the productivity of the proposed site is average for most crops at the state and local levels, and that the prime and unique farmland directly affected by construction of the station and inundation of the cooling lake represents a very small percentage of the total prime and unique farmland in Texas. Ms. Pavlovic fails to challenge any portion of the Staff analysis in this regard.

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

Contention 4

Ms. Pavlovic asserts that projected estimates of the need for the Allens Creek facility can be reduced if conservation is taken into account. The Staff notes that this issue is already admitted as a matter in controversy by the Board as TEXPIRG contention 7, and therefore the Staff has no objection to the participation of Miss Pavlovic, provided that she be required to consolidate with TEXPIRG and the other individuals who have raised this issue.

Contention 5

The petitioner contends that the Applicant should be required to install an off-site radiation monitoring system that would also take into account weather conditions, with continuous computer processing. The Staff notes that the Board has already accepted for litigation Hinderstein contention 9, which is similar in content to the issue raised by Ms. Pavlovic. Therefore, the Staff would have no objection to the petitioner's participation on this issue, provided that she be required to consolidate with Miss Hinderstein.



Contentions 6 through 8

The petitioner expresses a concern about the possibility of railroad accidents involving transportation of radioactive materials. In the process, she makes several hypothetical and highly speculative assumptions concerning possible routes and possible destinations for transportation of radioactive materials. She also expresses concern, in contention 8, about the safety of railroad crossings in the state of Texas and the danger to the motoring public which is created by maintaining those crossings in an unsafe condition. These contentions could well be rejected solely on the basis of their speculative nature; however, the Board need not reach that question, since contentions 6 and 7 constitute impermissible challenges to 10 CFR section 51.20(g) and Summary Table S-4, and therefore for the reasons discussed in connection with Conn contention 3, supra, there is no basis upon which to admit those contentions as issues in controversy. Contention 8, dealing with the unsafe conditions at railroad crossings is clearly beyond the jurisdiction of this Board; the NRC is not in a position to direct the maintenance and improvement of rail crossings in the state of Texas to protect the motoring public. This concern should be directed to appropriate state authorities. For these reasons, there is no basis upon which to admit these contentions as issues in controversy in this proceeding.

Contention 9

The petitioner contends that the Applicant's and Staff's consideration of alternative energy sources is inadequate since these sources were considered separately and not as part of a "multi-source system." She alleges in a decentralized system using multiple alternative energy sources would be less wasteful of energy, use less non-renewable resources, be more economical to build, maintain and operate, and be safer to workers and populations.

Not only has the petitioner failed to specify any of the alternative energy sources which she believes should be used to supply the energy which would otherwise be generated by the Allens Creek facility, but she makes no assertion and presents no information from which one could draw the conclusion that the unspecified alternative energy sources to be used in combinations would in fact be able to supply this need. See Vermont Yankee Nuclear Power Corp. v. NRDC, supra. Since many alternatives are intermittent in operation (e.g. wind power, solar power), they cannot supply baseload power, and the petitioner does not allege otherwise. Accordingly, Ms. Pavlovic has presented no information which would indicate that these decentralized multiple location energy sources would provide a consistent supply of energy to any given locality. Further, she provides no basis for her assertions with regard to the advantages of the postulated multi-source system which she envisions. Finally, with regard to her reference to a study done concerning the Pacific Gas & Electric Company's service area, Ms. Pavlovic has neither cited anything from the study which is more specific or contains more of a basis for the viability of a multi-source system than the allegations which she herself makes; nor does she show any nexus between the particular problems and needs of PG&E and the needs of the Applicant for the Allens Creek service area.

For all of the above reasons, the Staff believes that there is no basis upon which to admit this contention as an issue in controversy.

Contention 10

The petitioner contends that the Allens Creek construction permit should be withheld until the final report of the Kemery Commission is issued concerning the accident at the Three Mile Island facility. This contention deals with a matter

1293 291

of Commission policy and presents no litigable issue which this Board could resolve. There is currently no moratorium on the holding of hearings pending the completion of the Kemeny Commission's report. Further, since this report is due to be completed by October 25, 1979, the recommendations of the Kemeny Commission will be made public far in advance of the holding of any hearing in this matter and the Board will of course be bound by any Commission action as a result of the Kemeny Commission's recommendations. Therefore, since the contention presents no issue which could be resolved by this Board, it should be rejected.

Contention 11

The petitioner alleges, as do several others who have submitted contentions in this matter, that the licensing of the Allens Creek facility should be postponed until a solution is found to the problem of long term waste disposal. For the reasons discussed in response to Carrick contention 3, supra, this concern does not present an issue litigable in this proceeding, and therefore it should be rejected.

Charles Perez

The Supplement to Mr. Perez's petition contains but a single contention; however, the Staff is not sure that it understands the issue which Mr. Perez is attempting to raise. The petitioner seems to be challenging the adequacy of the structural integrity testing of the dry well to protect the public health and safety. However, he provides no basis for his assertion that the thermal

1293 292

and seismic effects which he postulates will not be adequately accounted for in such testing. It may be that Mr. Perez believes that the accident he discusses at the Dresden 2 and 3 plants in 1971 involving the blowdown of safety relief valves into a dry well provides a basis for his concern that structural integrity testing in the dry well is not adequate for the Allens Creek facility. If that is his contention, the relationship of the Dresden facility to the Allens Creek facility is not explained; indeed, the proposed facility is of a different design than that of the Dresden facility, with safety relief valve blowdown into a suppression pool outside of the dry well. In summary, the Staff finds this contention somewhat vague and not understandable. However, if we have interpreted Mr. Perez's concern and the basis therefore correctly, we believe that, as discussed above, the Dresden incident in 1971 provides no basis for the contention. Therefore, it should be rejected by the Board.

William Schuessler

Mr. Schuessler's contentions are contained in two separate pleadings, the first entitled "Amendment to Petition for Leave to Intervene Filed by William J. Schuessler on August 8, 1979" and a subsequent pleading dated September 12, 1979 entitled "Additional Contentions of William J. Schuessler." In all, Mr. Schuessler proffers 15 contentions which he seeks to have admitted to issues in controversy by this Board. The Staff will deal with these contentions seriatim below.

1293 293

Contention 1

Mr. Schuessler contends that the "mere proximity of ACNGS to my property" will adversely affect his property value. This contention does not provide an issue which is litigable before this Board, since as the Appeal Board has stated on at least two occasions, alleged economic harm comes within the ambit of the NEPA "zone of interests" only if it is environmentally related; i.e., if it will or may be occasioned by the impact of the federal action under consideration would or might have upon the environment. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977); Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 638-640 (1975), opinion of Mr. Rosenthal. As is clear from the examples given in Mr. Rosenthal's opinion in the Jamesport proceeding, Mr. Schuessler has alleged nothing which would demonstrate that the economic harm about which he is concerned is environmentally related. Nor is any basis given for the contention as required by 10 CFR §2.714. Therefore, the Staff believes that this contention should be rejected by the Board.

Contention 2

The petitioner contends that the Allens Creek facility is due west of his residence, and that due to weather activity, radioactive material which may be released from the plant would arrive at his residence in a matter of minutes. The Staff believes this concern does not create an issue which is litigable in this proceeding. First, Mr. Schuessler does not contend that any radioactive releases from the plant will be in excess of any of the dose limits set forth in applicable Commission regulations. Secondly, Mr. Schuessler has obviously

1293 294

not reviewed Supplement 2 to the SER prepared for this application, since it is clear from a reading of Section 2.3 of that document that meteorology, and specifically the worst meteorological conditions, have been accounted for in calculating doses resulting from operation of the proposed facility. Mr. Schuessler challenges none of the analysis presented in Supplement 2 to the SER. Accordingly, the Staff believes that there is no basis upon which to admit this matter as an issue in controversy.

Contentions 3 through 5

These contentions each assert a danger to Mr. Schuessler and his family in the event of accidents at the proposed facility. While the contentions more closely resemble statements of an "interest which may be affected by the proceeding" rather than litigable issues, the Staff emphasizes that it has analyzed a spectrum of accidents which could occur at the proposed facility, ranging from trivial incidents to serious loss of coolant accidents. These analyses are contained in Section 7 of the FES published in November, 1974 and in the FES Supplement in Section S.7. As a result of these analyses of this range of postulated occurrences, the Staff has concluded that the environmental risks due to the postulated radiological accidents are exceedingly small. Mr. Schuessler has not challenged the Staff analysis in this regard.

If the petitioner's contention is interpreted to assert that the environmental consequences of a Class 9 accident should be considered for the proposed facility, the Staff believes that the contention should be rejected from consideration in this proceeding (as contrasted with the ongoing rulemaking proceeding) for the reasons given in response to Bishop contention 1, supra.



Finally, in contention 5, Mr. Schuessler appears to assert that any radioactive releases in no matter what amount are unacceptable. If that is his contention, it constitutes a challenge to the Commission's regulations in 10 CFR Part 50, Appendix I, and 10 CFR Part 20. Such a challenge may not be entertained by this Board absent a showing, not made here, of special circumstances pursuant to 10 CFR §2.758.

For all of the above reasons, contentions 3 through 5 should be rejected by the Board.

#### Contention 6

The petitioner asserts that in the event of a serious accident at the Allens Creek facility it would be impossible to execute an effective evacuation plan because of the population density, and that this fact "drastically reduces chances of safe escape for my family and myself." The Staff notes that the petitioner resides at a distance of 35 miles from the proposed facility. For the reasons discussed in response to Doggett contention 5, supra, the Staff believes that this contention should be rejected.

#### Contention 7

Like several other petitioners, Mr. Schuessler is concerned that there has not yet been found a satisfactory solution to the problem of long term waste disposal. For the reasons discussed in Carrick contention 3, supra, this concern does not present an issue which is litigable before this Board.

Contention 8

Once again, Mr. Schuessler appears to allege that any release of radioactivity from the proposed facility is unacceptable because of the possibility of cell injury and genetic defects. For the reasons discussed above in response to his contention 5, the Staff believes that there is no basis upon which to admit this contention as an issue in controversy in this proceeding.

Contention 9

The petitioner asserts that the construction of the proposed facility will cause him to be required to pay unnecessarily high electric rates. This appears to be more a statement of an "interest which may be affected by the proceeding" than a contention. It is by now well settled that the economic interest of a ratepayer does not fall within the zone of interest protected by either the Atomic Energy Act or NEPA. Kansas Gas and Electric Company, et al. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 (1977); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420-21 (1977); Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-376, 5 NRC 426 (1977); Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804 (1976). Therefore, the Staff believes that there is no basis upon which to admit this contention as an issue in controversy.

1293 297

Contention 10

The petitioner alleges that the Applicant is the largest power company in the United States which does not interconnect interstate with other power companies, that other utilities outside of Texas have excess power which is available for the Applicant to purchase, and that the alternative of such interconnection has not been adequately considered by the Applicant or the Staff. The Staff notes that substantially the same contention has been raised by TEXPIRG in its pleading entitled "TEXPIRG's Amendments to Contentions of May 12, 1979," dated September 14, 1979. Therefore, since the Staff has already supported the admission of the TEXPIRG contention as an issue in controversy, we will have no objection to Mr. Schuessler's participation on this issue provided that he be required to consolidated with TEXPIRG.

Contention 11

The petitioner contends that neither the Applicant nor the Staff has given adequate consideration to the use of coal or lignite as alternate energy sources. With regard to lignite, the Staff notes that the Board has addressed a question to the Staff and Applicant in its "Order Ruling Upon Intervention Petitions," dated February 9, 1979, with regard to the availability of lignite and the environmental cost of its use. The Staff, therefore, has no objection to the participation of Mr. Schuessler on that issue. However, with regard to the alternative of a coal fired generating station in general, as discussed, supra, the Staff has done an extensive analysis of that alternative in the FES Supplement, in Sections S.9.1.2.1, S.9.1.2.3 and Appendix S.D. Mr. Schuessler does not challenge any part of that Staff analysis, and therefore the Staff believes that this portion of the contention should be rejected by the Board.

1293 298

Contention 12

Mr. Schuessler asserts that there is no need for the power to be generated by the Allens Creek facility because (a) the Applicant has already contracted to buy the City of Austin's excess electricity in the amount of 500 megawatts per year, (b) the Applicant has announced that it plans to build a 1500 megawatt capacity lignite plant north of Houston which will be in operation by 1986, (c) it is possible that the cities of Austin and San Antonio may sell their shares of the South Texas project to the Applicant, and (d) the city of Houston is considering the possibility of burning solid waste to generate steam in cogeneration facilities that could generate 500 megawatts of power.

With regard to subparts (c) and (d) of contention 12, the Staff believes that these assertions are pure speculation and that they cannot form the basis for a litigable contention in the absence of a showing that the power from the sources will actually be available to the Applicant in the time frame in which it is needed. However, with regard to subparts (a) and (b) of the contention, the Staff believes that they do form the basis for an issue which meets the requirements of 10 CFR section 2.714 and that to the extent Mr. Schuessler alleges that inadequate consideration has been given to the contract between Austin and the Applicant for the purchase of power, and the construction of the lignite plants north of Houston, the contention should be admitted as a matter in controversy. We note that Elinore Cumings has also raised, in the context of a need for power contention, the failure of the Applicant and Staff to consider the construction of the lignite plants north of Houston in their analysis of the need for the plant. See Cumings contention 2(...). Should both contentions be admitted by the Board, we believe that Miss Cumings and Mr. Schuessler

should be required to consolidate on this issue.

Contention 13

The petitioner contends that the Applicant is not financially qualified to design and construct the Allens Creek facility. However, the contention is based largely on speculation concerning possible cost overruns at the Allens Creek facility, "expected financial losses" related to a possible pull out from the South Texas project by the cities of Austin and San Antonio, "expected increased cost" due to the Three Mile Island accident, the "expectation" that rate relief will not be granted to the Applicant by the Texas Public Utilities Commission, and the "ever increasing cost of borrowing money." Such speculation cannot form the basis for a litigable contention in this proceeding. Further, Mr. Schuessler has not challenged either the reasonableness of the Applicant's financing plan for the Allens Creek facility or its ability to adapt to changing economic conditions. For these reasons, and those further developed in response to Baker contention 1, supra, the Staff believes that there is no basis upon which to admit this contention as an issue in controversy.

Contention 14

The petitioner contends, in essence, that the Applicant cannot meet the emergency planning requirements of 10 CFR Part 50, Appendix E, because the state of Texas has no detailed evacuation plans for the city of Houston and environs at this time and because the evacuation of Houston in the event of a serious accident, would be impossible. Finally, the petitioner asserts that because of the likelihood that emergency and evacuation planning will be extended to a 10 mile radius around nuclear facilities, that it is "assured" that it will be impossible for

the Applicant to comply with 10 CFR Part 50, Appendix E.

With regard to this latter assertion, Mr. Schuessler asserts no basis, and none is apparent, why the Applicant would be unable to comply with the Commission's emergency planning regulations if and when requirements for emergency planning are extended to a 10 mile radius. Therefore this portion of the contention should be rejected by the Board.

The fact that no detailed evacuation plans have been developed at this stage of the proceeding by the state of Texas does not form the basis for a litigable contention in this proceeding, since 10 CFR Part 50, Appendix E has never required and does not now require the development of detailed evacuation plans at the construction permit stage of a licensing proceeding. Further, to the extent that Mr. Schuessler contends that it would be impossible to evacuate the Houston area in case of a serious accident at the Allens Creek facility, this portion of the contention is almost identical to his own contention 6, and the Staff opposes it on the same grounds.

Since no portion of contention 14 would form the basis for a litigable issue in this proceeding, the Staff believes that it should be rejected by the Board.<sup>7/</sup>

#### Contention 15

Mr. Schuessler contends that neither the Applicant nor the Staff has given sufficient consideration to the aesthetic impacts of the Allens Creek facility. This contention should be rejected by the Board since in both the FES (Section 5.6.5) and the FES Supplement (Section S.5.6.1) the Staff has considered the

---

<sup>7/</sup> It is noted that the Commission's requirements in regard to emergency evacuation are being reexamined at this time. Should Commission regulations change to allow consideration of these matters, they would then be the subject of proper contentions.



visual impacts from the facility and concluded that these impacts are acceptable for the reasons stated in the Staff documents. Mr. Schuessler has not referred to, let alone challenged any of the Staff analysis of visual impacts, and he therefore has provided no basis for a litigable contention in this proceeding.

Patricia Streilein

Contentions 1 and 3

The petitioner contends that the South Texas site is a preferred alternative to the Allens Creek site for the construction of a nuclear generating station because (a) there would be less land usage at the South Texas site to construct an additional unit than there would be at the Allens Creek site, (b) the Allens Creek site lies directly in the migration path of millions of snow geese, and the construction of the proposed facility would disrupt their natural migration pattern, (c) the rise in temperature in the Brazos River water would have undesirable ecological impacts as a result of the construction of the proposed facility, and (d) construction costs would be less at the South Texas since there would be no need to construct an additional cooling lake or to provide additional support services.

The Staff notes that the issue of the South Texas site as a preferred alternative to the proposed site has been raised by TEXPIRG as well as several other petitioners for leave to intervene. Therefore, we would have no objection to the participation of Miss Streilein on this issue, provided that she be required to consolidate with the others raising the same concern.

1293 302

Contention 2

The petitioner contends that for various reasons, the location of a nuclear facility at the proposed site "would hinder and limit the current westward trend for development of the greater Houston area." The contention should be rejected for two reasons. First, the petitioner offers nothing but speculation to support her assertion that the proposed facility would have any significant impact on population distribution in the Houston area. Secondly, she does not assert that the future population distribution in the site area would prohibit it from complying with the siting criteria in 10 CFR Part 100.

Therefore, there is no basis upon which to admit this issue as a matter in controversy.

Marlene Warner

Dr. Warner's supplement to her petition for leave to intervene, dated August 19, 1979, contains a single contention. She asserts that the Commission's regulations are inadequate to protect the public health and safety because they allow radioactive chemicals which contain known carcinogens to enter the food chain in violation of the Delany Clause of the 1958 Food Additive and the 1960 Color Additive Amendments to the Food, Drug and Cosmetic Act.

The Staff believes that Dr. Warner is in the wrong forum in raising this issue. Her assertion that the Commission's regulations are inadequate to protect the public health and safety is a challenge to those regulations which may not be

1293 303

entertained by this Board absent a showing, not made here, of special circumstances pursuant to 10 CFR §2.758. If Dr. Warner has a basis for believing that the Commission's regulations should be modified in any way, her recourse is to file a petition for rulemaking pursuant to 10 CFR §2.802.

Connie Wilson

Contention 1

Miss Wilson asserts that she and her family reside between 30 and 35 miles from the proposed facility and that she is concerned with the radiation risk imposed on her family and herself from operation of the power plant. This is not a contention, but a statement of what Miss Wilson believes "constitutes proper interest" for purposes of satisfying the requirements of 10 CFR section 2.714. The Staff has already agreed that Miss Wilson has demonstrated the requisite interest in the proceeding.

Contention 2

Joining TEXPIRG and several other petitioners, Miss Wilson alleges that the South Texas site is a preferable alternative to the Allens Creek site for the construction of a nuclear power facility. She asserts that the South Texas site offers the advantages of less population density, less land usage, and less water usage. The Staff has no objection to Miss Wilson's participation on this issue provided that she be required to consolidate with the others raising it.

1293 304

Contention 3

The petitioner contends that the construction permit for the proposed facility should be denied because there is not yet a solution to the problem of long term storage of radioactive waste. For the reasons discussed in response to Carrick contention 3, the Staff believes that this contention should be denied.

Contention 4

The petitioner asserts that a solid waste plant would be a preferable alternative generating source and would be more suitable for the Allens Creek site. While the contention as stated lacks a basis for Miss Wilson's assertion, the Staff notes that the same issue has already been raised and admitted by the Board as an issue in controversy as TEXPIRG contention 5. Therefore the Staff has no objection to the participation of Miss Wilson on this issue, provided that she be required to consolidate with TEXPIRG.

Contention 5

Miss Wilson contends, in effect, that the licensing process for this facility should be suspended until the entire issue of nuclear power is reexamined in light of the Three Mile Island accident. For the reasons discussed in response to Pavlovic contention 10, supra, the Staff believes that this contention should be rejected by the Board.

1293 305

Conclusion

For the reasons discussed above, the Staff believes that, should the Board determine that they have established the requisite interest in this proceeding, the Staff believes that the petitions for leave to intervene of the following persons should be granted, since they have each proffered at least one contention which is litigable in this proceeding. Mr. and Mrs. J. Morgan Bishop, Dorothy Carrick, Carolina Conn, Elinore Cumings, Stephen Doggett, Robin Griffith, Leotis Johnston, Rosemary Lemmar, Frances Pavlovic, William Schuessler, Patricia Streilein, and Connie Wilson.

For the reasons discussed above, the Staff believes that the following contentions should be admitted as issues in controversy:

Bishop contention 18, 23(a) and (c)

Carrick contention 4

Conn contention 2

Cumings contention 2(a), 4, 6(b) and (c) [passive solar techniques]

Doggett contentions 2 and 3

Griffith contention 4 (cooling lake as a recreational fishery)

Johnston contentions VI and VII (combined as a single contention dealing with South Texas as an alternative site), and contention VIII

Lemmar contentions 2 and 4

Pavlovic contention 4 and 5

Schuessler contentions 10 and 11 (lignite as an alternative energy source), contention 12(a) and (b)

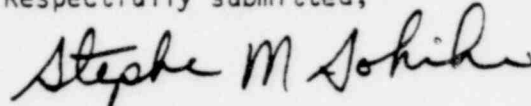
1293 306

Streilein contentions 1 and 3 (combined as a single contention  
dealing with South Texas as an alternative site)

Wilson contentions 2 and 4

However, since they have failed to proffer at least one litigable contention,  
the Staff believes that the petitions of the following persons should be denied:  
Bryan Baker, Kathryn Otto, Charles Perez, and Marlene Warner.

Respectfully submitted,



Stephen M. Sohinki  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 9th day of October, 1979

1293 307



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 SUPPLEMENTS TO PETITIONS FOR LEAVE TO INTERVENE FILED BY BRYAN BAKER, MR. AND MRS. J. MORGAN BISHOP, DOROTHY CARRICK, CAROLINA CONN, ELINORE CUMINGS, STEPHEN DOGGETT, ROBIN GRIFFITH, LEOTIS JOHNSTON, ROSEMARY LEMMAR, KATHERINE OTTO, FRANCES PAVLOVIC, CHARLES PEREZ, WILLIAM SCHUESSLER, PATRICIA STREILEIN, MARLENE WARNER, AND CONNIE WILSON" in the above-captioned proceeding have been served on the following by deposit in the U.S. 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:

Sneldon 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

1293 308

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. Murrack  
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

1293 309

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

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

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

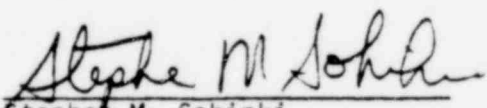
Roy E. Loyless  
P.O. Box 249  
Simonton, TX 77476

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

1293 312