

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

Sheldon J. Wolfe, Esquire, Chairman
Dr. E. Leonard Cheatum, Member
Gustave A. Linenberger, Jr., Member



SERVED NOV 20 1979

In the Matter of

HOUSTON LIGHTING AND POWER COMPANY

(Allens Creek Nuclear Generating
Station, Unit 1)

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Docket No. 50-466 CP

ORDER
(November 19, 1979)

Pursuant to the Board's Order of August 6, 1979, the § 2.715a special prehearing conference was held between October 15 and October 19, 1979 in Houston, Texas. The following parties and counsel entered their appearances: J. Gregory Copeland, Esq. and Jack Newman, Esq. for Applicant; Stephen Sohinki, Esq. and Colleen Woodhead, Esq. for the NRC Staff; Richard Lowerre, Esq., for the interested State of Texas; James Scott, Jr., Esq. for Texas Public Interest Research Group; John F. Doherty; Brenda McCorkle; and Carro Hinderstein.

Mrs. Karen Stade, in a letter dated June 26, 1979, and Mr. and Mrs. Bruce Palmiter, in a letter dated September 15, 1979, requested leave to withdraw their petitions for leave to intervene. These requests were granted, and the Board stated that these individuals, if they so desired, could make limited appearance statements at a time and place to be noticed at a later date (Tr. 709).

Subsequent to our Order Ruling Upon Intervention Petitions dated February 9, 1979, numerous individuals sent one or more letters which we deemed to be requests to make limited appearance statements because of one or more of the

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following reasons: (1) the letters requested to be treated as such or on their face appeared to be requests to make limited appearance statements, (2) the letters could not be considered by the Board as being petitions for leave to intervene because they had not been filed by July 18, 1979, the due date set in the Supplemental Notice of Intervention Procedures dated June 12, 1979 which was published in 44 Federal Register 35062 on June 18, 1979, (3) the letters could not be considered as petitions for leave to intervene because, contrary to the specific requirement in the aforementioned Supplementary Notice of Intervention Procedures, the writers thereof did not state that they had failed to file petitions for leave to intervene pursuant to the Board's Notices of May 31 and September 11, 1978 because of the restrictions on permissible contentions contained in those notices, and (4) most of the letters, even if, for argument's sake, they could be deemed to be petitions for leave to intervene, were not supplemented by a list of contentions by the due date of September 14, 1979 as directed in the Order Scheduling The Special Prehearing Conference dated August 6, 1979 and published in 44 Federal Register 47653 on August 14, 1979. The following individuals were identified as being those whom the Board deemed and ruled to be individuals requesting to make limited appearance statements: (Tr. 710-716).

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| 1. J. Michael Ancarrow | 2. Alma Arrazolo |
| 3. Mr. & Mrs. John Atkinson | 4. Mrs. Fern Barnes |
| 5. John and Jeanette Beverage | 6. Barbara Blatt |
| 7. Janice Blue | 8. Laura Brode |
| 9. Stephanie Brown | 10. Earl Bruner |
| 11. Dorothy Carrick | 12. Billy Carr |
| 13. James Chilcoat | 14. Alphonso Cipeda |
| 15. Mrs. W. S. Cleaves | 16. Gabrielle Cosgriff |
| 17. Elinor Cumings | 18. Abraham Davidson |
| 19. Gail De Gregori | 20. Dick Day |
| 21. Nancy L. Durham | 22. Stephen Doggett |
| 23. Robert R. Edgar | 24. Vesta Eidman |

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| 25. T. E. Elder | 26. Dana Erichson |
| 27. Pat Erichson | 28. E. R. Filley and others |
| 29. Helen Foley | 30. Mary Fuller |
| 31. William R. Funderburke, Sr. | 32. Barbara Ginn |
| 33. Albert Gonzales | 34. Robin Griffith |
| 35. Marjorie Gurasich | 36. Niarni Hanson |
| 37. Mr. & Mrs. Ben Hoddler | 38. R. D. Hoffman |
| 39. Kathryn Hooker | 40. Phil J. Jones |
| 41. Sandra Jung or J-u-n-e | 42. Barbara Karkaki |
| 43. Robert Keuhm | 44. Rachel Weinred-Kuehm |
| 45. Mr. & Mrs. Andrew Ladner | 46. Laura Lewis |
| 47. Israel Lopez | 48. Jean Lotz |
| 49. Mr. & Mrs. Roy Loyless | 50. Mr. & Mrs. B. M. Mayer |
| 51. Susan McGuire | 52. Dr. & Mrs. Nicholas Michaels |
| 53. Steve Mills | 54. Kathy Mohnke |
| 55. Eugene Mueller | 56. Kathryn Otto |
| 57. Frances Pavlovic | 58. Virginia Lacy Perrenod |
| 59. John D. Pittman, Sr. | 60. Albert Rickert, Jr. |
| 61. Gene Robertson | 62. James H. Robinson |
| 63. Dorothy J. Ryan | 64. Mr. & Mrs. Larry Scott, Mr. &
Mrs. Robert Edgar, Mr. & Mrs.
Don McFarland and Mr. & Mrs.
Charles Fuller |
| 65. Patricia L. Streilein | 66. Alan Vomacka |
| 67. Marshall C. Tyndall, Sr. | 68. Bonny Wallace |
| 69. D. B. Waller | 70. Tanya Watkins |
| 71. Donald D. Weaver | 72. Jane Weaver |
| 73. Jeffrey West | 74. S. W. Woodward |

Any of the above-named individuals who believed they should be considered petitioners for leave to intervene were invited to come forward and give reasons why the Board should reconsider its rulings. (Tr. 717). As hereinafter discussed, certain of these individuals did present oral arguments. (1) After hearing Stephen Doggett, Esq., the Board reconsidered and treated his letter of July 17, 1979 as being a petition for leave to intervene because he did assert that he had been dissuaded from timely filing due to the restrictions on permissible contentions in at least one of the prior notices. (Tr. 718-722). (2) After hearing Ms. Robin Griffith, the Board reconsidered and treated her letter of July 17, 1979, as being a petition for leave to intervene because, via an

amendment, in a letter of September 14, 1979, she asserted that she had not previously filed due to restrictions in prior notices. (Tr. 739-740). (3) After Ms. Frances Pavlovic indicated that she had not been dissuaded from filing a petition for leave to intervene because of the limitations in our earlier Notices of May 31 and September 11, 1978 and, in any event, had been unaware of our Supplementary Notice of Intervention Procedures dated June 12, 1979 which required that a petition for leave to intervene must state that a petition had not been previously filed as required by the two aforementioned Notices because of the restrictions therein on permissible contentions, we denied her request for reconsideration.^{1/} (Tr. 740-750). (4) Mr. Eugene Mueller indicated that he had been unaware that our Order Scheduling Special Prehearing Conference dated August 6, 1979 (44 Fed. Reg. 47653) had set September 14, 1979 as the due date for the filing of contentions. Understanding from friends that he had until fifteen days before the special prehearing conference within which to file contentions, he filed a letter of contentions on September 25, 1979. The Board affirmed that it would treat his

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^{1/} Subsequently, Ms. Pavlovic's attorney, Mr. Doggett, advised that she did not object to being classified as a person wishing to make only a limited appearance (Tr. 1225). In addition, Mr. Doggett, representing Mrs. Dorothy Carrick, advised that she requested that her prior correspondence merely be treated as a request to make a limited appearance. (Tr. 1141, 1145-1146). Further, Mr. Doggett, representing Ms. Nancy L. Durham, stated that he accepted the Board's ruling that her submissions be treated as merely a request to make a limited appearance. (Tr. 1206). Finally, we note that the Board directed Mr. Doggett on October 15, 1979 to contact Ms. Patricia L. Streilein, whom he represented, in order to find out why she had not stated in her petition for leave to intervene dated July 17, 1979 that previously she had failed to file a petition pursuant to the Board's Notices of May 31 and September 11, 1978 because of the restrictions on permissible contentions contained therein (Tr. 738-739). Subsequently, on October 17, 1979, after Mr. Doggett had failed to present a clear explanation, we again directed Mr. Doggett to contact his client in order to secure information upon which the Board could base a determination. (Tr. 1227-1230). No such information was presented thereafter. Accordingly, our ruling stands - viz. that her letter of July 17, 1979 will be treated as merely a request to make a limited appearance.

letter of July 10, 1979 and his contentions as merely being a request to make a limited appearance statement because publication of our Order of August 6, 1979 in the Federal Register is notification to all persons. Federal Crop Insurance Company v. Merrill, 332 U.S. 380, 384-85 (1947); Buckner Trucking, Inc. v. U.S., 354 F. Supp. 1210, 1219 (1973). (Tr. 757-763).

(5) Ms. Kathryn Otto confirmed that, as indicated in her letter of September 13, 1979 which supplemented her letter of July 18th, she had failed to petition earlier, not because of the restrictions in the Notices of May 31 and September 11, 1978, but rather because she had assumed that the new power plant was going to be either coal or water generated. She stated that she had not read the aforesaid Notices which had been published in the Federal Register. In that publication in the Federal Register is notification to all, we affirmed our ruling that her letter would be treated merely as a request to make a limited appearance statement. (Tr. 764-766).

(6) Since Ms. Rachel Weinreb-Keuhm did not supplement her petition for leave to intervene dated July 10, 1979 with a list of contentions by September 14, 1979 (and indeed had not filed contentions as of October 15, 1979) as required in our Order Scheduling Special Prehearing Conference dated August 6, 1979, the Board ruled that publication of that Order in the Federal Register constituted legal notice to her and accordingly denied her request for reconsideration. (Tr. 766-769).

(7) Upon Mr. Donald Weaver's behalf, Mrs. J. Morgan Bishop requested that the Board reconsider its ruling as to him. Mrs. Bishop asserted that she had spoken to Mr. Weaver in Hawaii who stated that he had been intimidated by the Notices of May 31 and September 11, 1978. Because of the hearsay nature of this conversation, and because Mrs. Bishop did not ask and Mr. Weaver did not advise why he had not stated in his petition for leave to intervene dated July 17, 1979 that he had

been inhibited by the aforesaid Notices due to the restrictions on permissible contentions contained therein, we denied the request for reconsideration (Tr. 1230-1235).

Regarding Dr. Joe Yelder's letter of April 4, 1979, Ms. Ann Wharton's letter of July 4, 1979, and Mr. Gregory Kainer's letter of July 12, 1979, the Board noted that none of these individuals (a) had appealed from the Order Ruling On Intervention Petitions dated February 9, 1979, (b) had shown good cause for failing to file in a timely manner and discuss the four factors in 10 C.F.R. § 2.714 either after the decision in ALAB-535 or after the decision in ALAB-539, (c) had addressed the Supplementary Notice of Intervention Procedures dated June 12, 1979 which had expressly precluded any person from filing a petition for leave to intervene who had filed a petition for leave to intervene pursuant to the earlier Notices of May 31 and September 11, 1978, and (d) had filed a list of contentions. Since said individuals did not attend the special prehearing conference, the Board was unable to ask questions regarding their letters and the status sought, and accordingly the Board ruled that these letters were merely requests for leave to make limited appearance statements (Tr. 780-782).

In a letter dated July 13, 1979, J. Claude DeBremaecker stated that he desired to be a "full party" and listed one contention. The Board noted that, unlike the three individuals mentioned in the preceding paragraph, Mr. DeBremaecker did appeal from our Order of February 9, 1979 and that, in ALAB-535, the Appeal Board had sustained our denial of party status. The Board also noted that he had not shown good cause for failing to file in a timely manner shortly after the Appeal Board's decisions in either ALAB-535 or ALAB-539 and that he had not discussed the four factors in § 2.714. The Board further noted that he had not addressed the preclusive provision in our Supplementary Notice of Intervention

Procedures of June 12, 1979. Upon being indirectly advised that Mr. De Bremaecker had been present at the beginning of the conference but had left either due to his academic duties or because of his wife's illness, the Board ruled that, in light of his absence, it would consider his letter as merely being a request to make a limited appearance statement, but that, if he appeared during the next four and one-half days of the conference, it would consider his oral presentation as to why his letter should be treated as a petition for leave to intervene. (Tr. 782-783). Since Mr. DeBremaecker did not appear thereafter, our ruling stands.

The Board proceeded to hear the arguments of Dr. Marrack,^{2/} Mr. Potthoff,^{3/} Mr. Doherty^{4/} and TexPirg^{5/} responding to the objections by Applicant and/or Staff

^{2/} Applicant, Staff and Dr. Marrack stipulated to the admissibility of Marrack Contention 2.(b) provided the words "wildlife and biological systems" were deleted therefrom and provided said contention was consolidated with Rentfro Contention 2. (Tr. 1284-1285). The Board accepts the stipulation.

^{3/} Mr. Potthoff withdrew Contention 2 as well as the amendment thereto (Tr. 927-928).

^{4/} The Board accepted the Staff's, Applicant's and Mr. Doherty's stipulation agreeing to the admissibility of the following Doherty Contentions: 10, 13, 14 (the Board deleted that part relating to remedial measures), 17, Amended Contention 20, 25, Amended Contention 26, 30, 31 (the last two sentences were deleted pursuant to the stipulation), 32, 40, 41, 43 and 44 (Tr. 1596). Mr. Doherty withdrew the following contentions: 18 (Tr. 833), Amended Contention 19 (Tr. 1373), 20 (Tr. 1593), 26 (Tr. 1595), 29 (Tr. 1065), 33 (Tr. 1076), 34 (Tr. 1083), 37 (Tr. 1101), and 39 (Tr. 1129-1130). Mr. Doherty withdrew portions (a), (b), (c) and (d) of Amended Contention 29 of August 7, 1979. (Tr. 1058, 1062), deleted the second sentence of Contention 31 (Tr. 1067-1068), and struck from Contention 35 the words "less than union wages from Applicant's construction, Ebasco" and the words "and to require a pay scale for employees of all contractors for welding and welders equal to union wages for welders at similar constructor conditions, in order to assure continued employment of such welders". (Tr. 1083-1084). Finally, Mr. Doherty orally amended Contention 35 to add the following words after the second sentence: "There have been caldweld failures at STP which have been reported in NUREG-0030". (Tr. 1085).

^{5/} The Board accepted the Staff's, Applicant's and TexPirg's stipulation agreeing to the admissibility of TexPirg Amended Additional Contentions 1, 2 and 3, and of

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to the admissibility of their outstanding contentions. Mr. and Mrs. Robert Framson did not appear. In an Order to be issued hereafter, the Board will rule on the admissibility of those outstanding contentions which were not admitted during the conference pursuant to stipulations acceptable to the Board.

The Board then proceeded to hear the arguments by or on behalf of the following petitioners for leave to intervene responding to Staff's and/or Applicant's objections to the admissibility of their contentions: Mr. Bryan Baker, Mr. and Mrs. J. Morgan Bishop, Ms. Carolina Conn, Ms. Elinore Cumings (arguments were also heard on the timeliness of Ms. Cumings' petition and upon whether she had shown good cause for not asserting in her petition that she had been dissuaded from petitioning earlier because of the restrictions upon permissible contentions contained in our Notices of May 31 and September 11, 1978), Ms. Robin Griffith, Mr. Leotis Johnston, Ms. Rosemary Lemmer, Ms. Connie Wilson, Mr. Stephen Doggett, Mr. William Schuessler, Mr. Charles Perez, and Mr. Glen Van Slyke (arguments were also heard upon Mr. Van Slyke's standing and/or interest, upon the issue of timeliness, and upon the validity of his assertion that he had not filed a petition for leave to intervene earlier because of the restrictions in the Notices of May 31 and September 11, 1978). Mr. W. Matthew Perrenod, Mr. James Piepmeier, and the Honorable Ron Waters did not appear at

Footnote 5 (continued)

Additional Contentions 3, 15, 22, 32, 34, 48, 47 and 49. (Tr. 1596). The Board admitted Additional Contentions 30 and 46 since neither Staff nor Applicant objected thereto (Tr. 1602). TexPirg withdrew Amended Additional Contention 6 (Tr. 1050), Additional Contentions 2, 3, 6, 8, 16, 25, 26 and 42 (Tr. 1426-1427), and Additional Contention 38 (Tr. 1573).

the special prehearing conference to argue in response to the Applicant's and/or Staff's objections to the admissibility of their contentions. In an Order to be issued hereafter, the Board will rule upon the aforementioned arguments regarding Ms. Cumings and Mr. Van Slyke, and if, these objections are rejected, we will determine the admissibility of their contentions. Of course, in that same Order we will rule upon the admissibility of the contentions proposed by the other individuals identified in this paragraph.

In a letter dated July 9, 1979, Dr. Marlene Warner stated that "Prior restrictions against speaking out on nuclear power have prevented me from registering my opinion". Upon being asked to clarify what she meant by "prior restrictions", Dr. Warner discussed the contention set forth in her letter dated July 30, 1979 which, in pertinent part, stated "I contend that present regulations are inadequate to protect the public health and safety, and that normal emission levels should be examined and brought into conformance with the Delany Clause of the 1958 Food Additive and the 1960 Color Additive Amendments to the Food, Drug and Cosmetic Act". It was clear that Dr. Warner contended that the standards of the Food, Drug and Cosmetics Act, as amended, are preemptive and that the Nuclear Regulatory Commission's regulations (10 C.F.R. §§ 20.106, 50.34a and Appendix I to 10 C.F.R. 50) are inadequate to protect the public health and safety against radioactivity and the ingestion of carcinogenic chemicals via the food chain. The Board denied the petition for leave to intervene because the contention posed a question of law which we are not authorized to resolve - we are governed by the Commission's regulations in determining whether or not to grant a construction permit. Further, the contention constituted an impermissible challenge to the Commission's regulations and Dr. Warner did not present any special circumstances,

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supported by an affidavit, as required by 10 C.F.R. § 2.758. Dr. Warner was advised that she may file a petition for rulemaking pursuant to the provisions of 10 C.F.R. § 2.802. (Tr. 1498-1518).

With regard to contentions previously admitted, beginning October 22, 1979, the parties shall have forty-five (45) more days within which to complete discovery. Beginning as of October 22, 1979, the parties shall have one hundred and twenty (120) days within which to initiate and complete discovery upon those contentions whose admissibility was stipulated to by the parties and accepted by the Board during the special prehearing conference, inclusive of TexPirg's Contentions 30 and 46 which were admitted by the Board. (Tr. 1623).

Pursuant to 10 C.F.R. § 2.714a, within ten (10) days after the service of this Order, those individuals, whose submissions were ruled to be merely requests for leave to make limited appearance statements, and Dr. Marlene Warner, whose petition for leave to intervene was denied, may appeal this Order to the Atomic Safety and Licensing Appeal Board. Pursuant to 10 C.F.R. § 2.715(a), any individual may make a limited appearance statement at a time and place to be noticed at a later date.

Dr. Cheatum and Mr. Linenberger concur.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Sheldon J. Wolfe, Esquire
Chairman

Dated at Bethesda, Maryland
this 9th day of November, 1979.

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