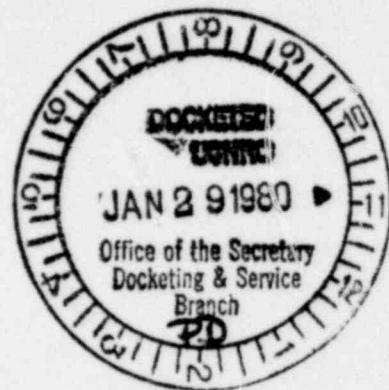


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman  
Dr. John H. Buck  
Michael C. Farrar

In the Matter of

HOUSTON LIGHTING AND POWER COMPANY

(Aillens Creek Nuclear Generating  
Station, Unit 1)

\$  
\$  
\$  
\$  
\$

Docket No. 50-466

PETITION FOR REVIEW OF DECISION  
OF ATOMIC SAFETY AND LICENSING  
APPEAL BOARD

Pursuant to §2.786 of the Commission's Rules of Practice  
for Domestic Licensing Proceedings, Petitioners DONALD D.  
WEAVER, PATRICIA L. STREILEIN, and KATHRYN OTTO petition for  
review of the Decision by the Atomic Safety and Licensing Appeal  
Board.

I. DECISION OF WHICH REVIEW IS SOUGHT

By Decision dated January 10, 1980 the Atomic Safety  
and Licensing Appeal Board affirmed the Licensing Board's  
November 19, 1979 order which denied the intervention petitions  
of Petitioners and decreed that their papers would be treated  
as merely requests to make limited appearance statements.

1942 169

8002080 049

## II. MATTERS OF FACT OR LAW RAISED BEFORE APPEAL BOARD

Petitioners filed Notices of Appeal from the Board's Order of November 19, 1979 with the Appeal Board on or about December 4, 1979. Each Petitioner raised the following two grounds of appeal: (1) publication of notice in the Federal Register only is a denial of fair notice and due process; and (2) the Supplemental Notice of Intervention Procedures dated June 12, 1979 published in the Federal Register is defective in requiring Petitioners to state that they failed to file petitions for leave to intervene pursuant to the Board's prior notices because of restrictions in those notices; such defective notices are tantamount to no notice and the requirement of a statement of proof of intimidation by the improper restrictions in prior notices denies due process. PATRICIA L. STREILEIN additionally argued that she in fact failed to intervene because of restrictions in prior notices, which restrictions she read about in newspaper accounts which accurately set out the restrictions. DONALD L. WEAVER additionally argued that he in fact failed to intervene because of the restrictions in prior notices as was stated in the record on his behalf by J. Morgan Bishop (Mr. Weaver being in Hawaii at the time of the hearing), that he was not put on notice that personal attendance or testimony would be required, and that the Board seemed to be erroneously emphasizing the issue of whether a statement of prior notice intimidation was included in the petition, as opposed to whether in fact prior notice intimidation had occurred.

### III. THE APPEAL BOARD'S DECISION IS ERRONEOUS

#### A. RESTRICTIONS IN THE JUNE, 1979 SUPPLEMENTAL NOTICE

The Appeal Board summary rejected the contention that the supplementary notice issued in June, 1979 improperly had required petitioners to state affirmatively that they had not filed a petition in 1978 because of the restrictions contained in the notices of that year. The Appeal Board took the position that the 1978 notices were not void and that it was unlikely that the restrictions had served to discourage potential petitioners. It left to the Licensing Board the decision of whether or not further notice might be necessary. It found that the restrictions in the June, 1979 notice were reasonable and proper.

The Appeal Board's decision is erroneous because: (1) the May and September, 1978 notices contained improper restrictions and were therefore void; (2) the June, 1979 Supplemental Notice improperly restricts intervention by requiring intervenors to state that they were intimidated or dissuaded from filing by the improper and unlawful notices of May and September, 1978; (3) the June, 1979 notices is therefore not fair notice and denies due process.

#### B. FEDERAL REGISTER NOTICE

The Appeal Board did not reach the contention that publication in the Federal Register is insufficient notice. The Appeal Board noted that petitioners had a duty to ascertain any preconditions for intervention, that this would have been

easy to do, that petitioners failed to do so, and that the Licensing Board was therefore justified in rejecting their petitions for intervention.

The Appeal Board's conclusion is wrong because publication of notice in the Federal Register only in this case was insufficient to provide fair notice and is a denial of due process. Petitioners' attack on the validity of notice to them must be addressed. The Appeal Board is taking the position that petitioners had a duty to ascertain and comply with requirements in a notice which notice petitioners are claiming is improper and constitutionally insufficient.

#### C. INTIMIDATION IN FACT

The Appeal Board rejected the arguments of PATRICIA L. STREILIEN and DONALD D. WEAVER that they were in fact intimidated by restrictions in the 1978 notices on the grounds that no weight should be attached to hearsay statements on this issue.

The Appeal Board's decision is erroneous because no Board notice in relation to the Pre-Hearing Conference required a personal appearance or sworn testimony or affidavit on the issue of failure to file because of restrictions in prior notice; the Licensing Board only required that it be "advised" on this issue. (JUNE 12, 1979, Order pp 3-4). The rejection of statements by Petitioners' attorney or others on the ground of hearsay or lack of probative value denies due process and is unfair because of lack of notice that personal appearance or sworn statement would be required.

Petitioners STREILEIN and WEAVER are also denied equal protection because they have been required to produce non-hearsay proof on this issue while other intervenors have been admitted on the basis of hearsay, albeit written , statements contained in their petitions to intervene.

#### IV. COMMISSION REVIEW SHOULD BE EXERCISED

Commission review should be exercised because the Licensing Board and Appeal Board denial of Petitioners' interventions are erroneous and involve important procedural issues and questions of public policy. Petitioners have questioned the fairness of giving notice solely by publication in the Federal Register in this licensing proceeding. Petitioners concede that this manner of notice complies with the letter of statutory law, but argue that this notice does not meet constitutional requirements of due process fair notice. Moreover, they have attacked restrictions in the particular notice in question as being unfair and invalid under due process. A ruling on these two issues could have enormous impact on the course of this licensing proceeding and on procedures in other licensing proceedings as well.

What is involved is not strictly a narrow legal question. This is also a policy decision as to just how the Commission will construe its rules and governing statutes as they relate to the issue of citizen participation in its licensing proceedings. The evidence is overwhelming that publication of notice in the

Federal Register in this case has not been effective in providing actual notice to potentially interested persons. No one intervened after the Federal Register notice in 1973. Increasing numbers have attempted to intervene after subsequent notices, but their number, certainly less than 200, is incredibly small considering the location of the proposed plant is in an area containing a million plus persons. Moreover, those who did intervene in almost every case learned about the proceedings from a source other than the Federal Register.

Those few who have heard about the licensing proceedings and have attempted to intervene have been met with the staunchest resistance from the Applicant, NRC Staff, Licensing Board and Appeal Board.

On close examination, Petitioners in this case have been denied intervention solely because they failed to include a sentence in their petitions stating that they failed to intervene because of restrictions in prior notices. Is it the policy of the NRC to exclude from licensing proceedings citizens, whose health and property may be affected, on the grounds that they have failed to comply with what to them must surely seem to be a legal technicality? These citizens ask -"what has the applicant and NRC got to hide? Why can't we be involved".

1942 174

Decisions such as this denying of Petitioners intervention, and the legal hasseling leading up to such decisions, do more to impede the progress of licensing proceedings and obscure the real issues in such proceedings than any other cause.

It is respectfully urged that the Commission reverse the Appeal Board in this matter, that the Commission mandate guidelines which will assure fair notice to those who live near proposed nuclear facilities, and that the Commission establish a policy which will allow, if not encourage, full participation in licensing proceeding by concerned citizens.

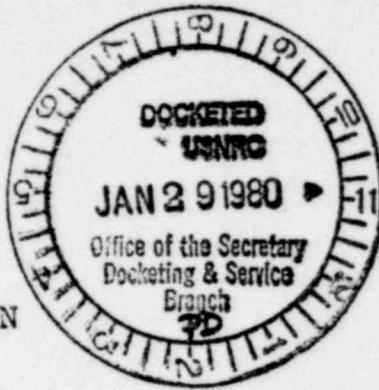
Respectfully submitted,

*Stephen A. Doggett*

STEPHEN A. DOGGETT  
Attorneys for Petitioners  
1000 Austin - Suite C  
P.O.Box 57  
Richmond, Texas 77469  
Telephone: (713) 342-3242  
342-3321

1942 175

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



In the Matter of

HOUSTON LIGHTING & POWER COMPANY  
(Allens Creek Nuclear Generating  
Station, Unit 1)

Docket No. 50-466

CERTIFICATE OF SERVICE

I hereby certify that copies of "Petition for Review of Decision of Atomic Safety and Licensing Appeal Board" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 24<sup>th</sup> day of January, 1980:

Alan S. Rosenthal, Esq., Chairman  
Atomic Safety and Licensing  
Appeal Board  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Dr. John H. Buck  
Atomic Safety and Licensing  
Appeal Board  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

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

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

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

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

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

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

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

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

D. Marrack  
420 Mulberry Lane  
Bellaire, Texas 77401

s - 1942 176

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

Docketing and Service Station  
Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Margaret Bishop  
11418 Oak Spring  
Houston, Texas 77043

Patricia L. Streilen  
Route 2, Box 398-C  
Richmond, Texas 77469

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

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

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

1942 177