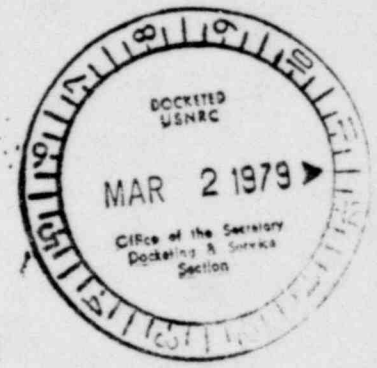

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
HOUSTON LIGHTING & POWER COMPANY, et al.	)	Docket Nos. 50-498-OL 50-499-OL
	)	
(South Texas Project, Units 1 & 2)	)	
	)	
	)	

APPLICANTS' RESPONSE TO PETITION FOR LEAVE TO INTERVENE OF CITIZENS FOR EQUITABLE UTILITIES, INC.

Applicants hereby file this Response in opposition to the late-filed Petition for Leave to Intervene ("the petition") of Citizens for Equitable Utilities, Incorporated ("C.E.U."). The petition fails to demonstrate that C.E.U. is entitled to intervene as a matter of right; and it asserts no contention which should be considered in a hearing. The balance of factors enumerated in 10 CFR §2.714 (a) and (d) point to the denial of the petition, as does the balance of considerations pertinent to discretionary intervention.

I

The Petition Does Not Establish C.E.U.'s Standing

Unless injury to the organization itself is asserted -- which is not the case here -- a petition for leave to intervene

on behalf of an organization must rest upon the interests of its members. Sierra Club v. Morton, 405 U.S. 727 (1972); Warth v. Seldin, 422 U.S. 490 (1972). Those interests rise to the level of judicial "standing" when it is shown that there is, or may be, some injury in fact which bears some causal relationship to the subject matter of the proceeding. Duke Power Company v. Carolina Study Group, 98 S.Ct. 2620, 2633-4 (1978).

But those determinations cannot be made unless there is some reasonable identification of the members of the organization whose interests are allegedly affected.[1/] Otherwise it is extremely difficult to establish "the nature of the petitioner's right under the Act to be made a party to the proceeding." 10 CFR §2.714(d)(i). That task borders on the impossible in this case. The words "constituency," "membership," "membership mailing list" and "persons represented" are used in the petition in such a confusing manner that one cannot tell whether those described are actually "members" of the organization.

1/ Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976); Public Service Electric and Gas Company (Salem Nuclear Generating Station), ALAB-136, 6 AEC 487, 488-489 (1973); Duquesne Light Company (Beaver Valley Unit 1), ALAB-109, 6 AEC 243, 244, n.2 (1973); Public Service Company of Indiana (Marble Hill Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976); see also Duke Power Company (Amendment to Materials License SNM-1773 etc.), Docket No. 70-2623, Supplemental Order on Petitions for Leave to Intervene, January 9, 1979, reversed, Appeal Board Order of February 13, 1979.

By way of example, the petition refers to a "constituency throughout the state of many thousands," all of whom allegedly live within a 50-mile radius of the plant. There follows a tabulation (p. 7)[2] of approximately 3,000 individuals described as "persons represented" having interests related to activities within 30 miles of the plant; the balance of the "constituency" is described as individuals in or near towns within a 50-mile radius where C.E.U. has a "membership mailing list" in excess of 1,300 persons. (emphasis supplied)

We submit that the petition defies determination of whether C.E.U. has any members in the geographic zone of interest who are interested in this proceeding other than one, Mrs. Kenneth C. Buchorn (p. 7). That might be sufficient were it not for the circumstance that Mrs. Peggy Buchorn and the person she purports to represent, Mrs. Kenneth C. Buchorn (p. 24), appear to be one and the same.[3] The petition may be little more than a document filed by a person on her own

---

2/ The pages of the petition are not numbered. The page numbers here referred to omit the title page and begin with the page containing footnote 1.

3/ One of the telephone numbers appearing underneath Mrs. Peggy Buchorn's signature on the petition is the same as the telephone number of Kenneth C. Buchorn in the telephone directory for Brazoria, Texas. That signature appears to be the same as the signature of Mrs. Kenneth C. Buchorn on the authorizing document signed by her attached to the petition.

behalf. That, of course, is permissible, but that is not what this petition purports to be. Instead, it is a web of tangled representations on behalf of an organization whose membership remains, for all the words, under a cloud.

The petition should be denied as no more than an invalid attempt to obtain organizational status for individual action. This is not a mere matter of form, particularly in weighing the factors associated with consideration of discretionary intervention. That task becomes truly insuperable where the organization obscures its membership, thereby preventing a sure understanding of the resources available to it to meet the burdens and responsibilities which fall upon a party-intervenor in a disciplined NRC proceeding.

II

Contentions

Applicants' answers to C.E.U.'s proposed contentions are as follows:

Contention 1

The petition misstates the evaluation of extreme wind loadings as reported in Applicants' PSAR and in the NRC

Staff's FES and SER.[4/] It recites (but without citation of any authority) wind speeds with respect to recent hurricanes along the Texas Gulf Coast, and then poses the question of whether "the Applicants or the NRC [can] reasonably expect the STP to operate safely and withstand such winds as may be encountered in this type Hurricane situation?" The question was considered and answered in the affirmative at the hearings at the construction permit stage. There is no new information to call that determination into question.

Section 2.3.1.3.1 of the PSAR demonstrates that the highest wind speeds recorded in Corpus Christi, Galveston and Victoria were evaluated by Applicant and that the highest of these, that experienced in Corpus Christi (not Galveston as asserted by Petitioner) during Hurricane Celia, was used in the evaluation. Section 3.3.1.2 of the PSAR explains the basis for selecting the hurricane design wind velocity for the STP site.[5/]

4/ References herein to the PSAR, the ER, the SER and the FES are to the Applicants' Preliminary Safety Analysis Report and Environmental Report and to the NRC Staff's Safety Evaluation Report (NUREG-75/075) and Final Environmental Statement (NUREG-75/019), respectively, all filed in evidence in the construction permit proceeding. References to the FSAR and to the ER/OL Stage are to the Applicants' Final Safety Analysis Report and Environmental Report/Operating License Stage, both filed with the NRC in conjunction with their applications for operating licenses.

5/ Reports of winds in excess of 125 miles per hour during Hurricane Carla were recognized in the ER. The basis for not relying on this data is discussed extensively in Section 2.6.1.3.6.

The petition cites no new data on huricane-induced wind velocity since the SER was issued in 1975, nor does it cite authority for any of its allegations except in the case of Hurricane Celia, the very storm used by Applicants in their analysis of the effects of a hurricane-induced wind.

Finally, in terms of the ability of the STP units to withstand wind-generated forces, the plant has been evaluated for extreme wind loadings in the context of tornado analyses. (SER Section 3.3) Section 3.3.1.2 of the PSAR goes on to note that "[b]ecause tornado-generated forces are greater than those resulting from the probable maximum hurricane, the design tornado will always govern design [of Category 1 structures]." Petitioner does not challenge this analysis.

For these reasons this contention is without merit and should be denied.

Contention 2

This contention fails to meet the requirements of 10 CFR §2.714(b) and for that reason cannot be allowed.

The petition alleges that "since the date of the Final Environmental Statement and the SER (1975) there has been sufficient new scientific evidence discovered which lead [sic] to the belief that the effect of the operation of STP on [larval shrimp, crab, oysters and similar mollusks] would be greater than anticipated." Yet, the petition cites no such scientific evidence for that or any other assertion. Nor does it indicate how the prior FES assessment is in error. The obscure reference to what has been "noted" by

unidentified "harvesters of marine life" simply does not qualify as new evidence, scientific or otherwise, and should be rejected.

Contention 3

The petition asserts "that certain wildlife species, particularly fowl, are endangered by the proposed operation of STP." It specifically identifies: (i) "Archer's Prairie Chicken," which it notes the FES "points out . . . is very nearly extinct in the area"; and (ii) snow geese, described by petitioner as "fragile and delicate" with "their numbers . . . being threatened."

Applicants can find no reference to any "Archer's Prairie Chicken" in the FES or to any fowl described as "very nearly extinct." Section 4.3.1.2 of the FES does note that "Attwater's prairie chicken," an endangered species, was observed in several locations along the transmission line right-of-way." The effect of the construction and operation of STP on the Attwater's prairie chicken was assessed at the construction permit stage and found acceptable.

> ". . .The proposed transmission corridors include some Attwater's prairie chicken habitat. Though actual construction would cause some temporary displacement of the birds, the amount of land occupied by the tower bases will be negligible habitat loss. . . . The major impact on the Attwater's prairie chicken would be caused by disruption due to construction activities during the nesting season; however, the

> Applicant has stated that transmission line construction activities will be restricted so as not to impact upon prairie chicken booming areas from January 1 to June 1." (Citations omitted) 2 NRC 271 at 281.

The snow goose is not identified as an endangered species known to frequent Matagorda County (see Section 2.7.1.1 of the ER). In fact, as reflected in Section 2.7.1.2.2 of the ER, (and again in the same Section of the ER/OL Stage), the snow goose is among the most abundant of the waterfowl in the area. The petition fails to state any basis for challenging these conclusions; indeed there is nothing to indicate that this data (gathered by the Applicants and reviewed by the NRC Staff) has even been read in the course of preparing the petition.

With respect to the petition's apparent concern as to the dose exposure of snow geese landing on the reservoir, Section 5.2.3 of the ER/OL Stage reflects that doses have been calculated for a duck feeding solely on aquatic vegetation in the reservoir and have been found to be acceptable. Accordingly, this contention is nothing more than an improper challenge to 10 CFR 50, Appendix I.

For the foregoing reasons, this contention should be denied.

Contention 4

Contention 4 raises the question of the effects of a flood "overrunning" the cooling reservoir. As is noted in Applicants' Response to Contention 1, the effects of extreme hurricane conditions have been considered. The reservoir embankment is 65 to 66.25 feet above mean sea level (see FES Section 3.4.2). The Applicants have analyzed the water level of the standard project flood, coupled with postulated failures of upstream dams. Applicants also analyzed the storm surge from the probable maximum hurricane coupled with the 100 year flood on the Colorado River. The stillwater level in the first case is 33 feet above mean sea level with a wave run-up to about 39 feet. In the latter case, the stillwater level is about 30 feet above mean sea level with a wave run-up to about 41 feet on the south embankment (see Section 2.4.2 of the SER).

On the basis of this information and its own evaluation, the Atomic Safety and Licensing Board considering the construction permit for the South Texas Project found ". . . that with regard to hydrological conditions, the proposed site is acceptable for the reactors proposed for the South Texas Project". (Citations omitted; 2 NRC 894 at 901.) Petitioner cites no new flooding data, nor does it specifically challenge the analysis heretofore made and the conclusions heretofore reached. This tardy and unsubstantiated

contention should be denied. The Commission has declared that, "an operating license proceeding should not be utilized to rehash issues already ventilated and resolved at the construction permit stage." Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), 7 AEC 203 (1974).

Contention 5

Contention 5 and Contention 6 both relate to radiological emissions from the plant in normal operation. They wholly ignore the extensive consideration that was given to this issue in both the Partial Initial Decision of August 8, to the issuance of the construction permits for the South Texas Project units. 2 NRC 271, 286-288; 2 NRC 894, 907-910. In the latter decision the Board expressly concluded that "the proposed liquid and gaseous radioactive management systems for South Texas Project Units 1 and 2 will satisfy the requirements of Appendix I to 10 CFR Part 50 and therefore are acceptable." 2 NRC 894 at 909.

Contention 5 makes no reference to this finding of compliance with Appendix I. Rather, it asserts that "due to the unusually high and relatively continual humidity level in the area . . . airborne emissions will be precipitated out over a closer diameter to the plant . . ." and "the danger is accordingly increased because of the concentration of those toxicants." However, the contention does not

suggest that the plant will not comply with Appendix I or request an exception or waiver of the regulation as provided in 10 CFR §2.758. The contention must therefore be denied.

Further, the implications of the contention appear to be that an error has been made in the failure to give adequate consideration to the "humidity level in the area." An examination of the licensing documents demonstrates this to be incorrect. Section 2.6 of the ER discusses the regional meteorology in detail, and it in fact takes into consideration relative humidity in the area, including the humidity of Victoria, Corpus Christi and Galveston (see ER Section 2.6.2.2.1.5, (p. 2.6-11) and Tables 2.6-18, 2.6-19 and 2.6-20 (pp. 2.6-37, 2.6-38, 2.6-39)). The suggestion that the impact of humidity was ignored is simply another example of failure to consult the basic documents.

Contention 6

This contention, simply stated, is that the population of milk-producing livestock requires "re aluation" to assure that radiological doses through the food pathway (in particular, milk) are acceptable. Such a re-evaluation will be done on an annual basis. At least six months prior to

scheduled issuance of the operating licenses, Radiological Effluent Technical Specifications, in accordance with NUREG-0472, Revision 1, will be submitted to the NRC for review and approval. NUREG-0472 (Rev. 1, 1978) requires an annual census of land use to assure that doses via food pathways (especially milk) are within NRC regulations. Thus, to the extent the contention argues for a periodic re-evaluation of such dairy operations, there is no issue between Applicants and Petitioner.

The FES, which Petitioner cites, states that there are no dairies within 10 miles of the site and no known cows or goats producing milk for human consumption within 5 miles of the site. This is based on a survey made in the preparation of the ER and noted as reference 2.2-1 in Section 2.2 of that report. In the preparation of the ER/OL Stage, another survey was made in October of 1977 (see 2.2-5 to Section 2.2 of the ER/OL Stage). No change was found. The petition does not assert otherwise. The contention is thus without any basis.

Contention 7

The petition proceeds from the erroneous premise that the source of supply of make-up water for the 7000-acre main cooling reservoir and the 46-acre essential cooling pond will be well water.

It is true that Section 3.4.5 of the FES, speaking only as to the 46-acre essential cooling pond, stated:

> "Whenever possible, this make-up water will be pumped from the Colorado River by a 250-gpm pump located at the make-up water intake structure through an approximately 16,000-ft. long 6-in. diam. line. Otherwise the make-up water will be provided by onsite wells."

However, this early design was modified prior to the health and safety hearing authorizing issuance of the construction permits for the South Texas Project, and the change was recognized in that decision:

> "[M]ake-up water for the main cooling reservoir will be provided from the Colorado River. Make-up water for the emergency cooling pond will be provided from the main cooling reservoir." (Citations omitted) 2 NRC 894 at 900.

Thus, the supply of make-up water for both reservoirs is the Colorado River, not well water. In the early design the water would have been taken from the river directly to the essential cooling pond. The actual design, as approved by the Atomic Safety and Licensing Board, contemplates that the water for the essential cooling pond will be taken from the river into the larger reservoir and from there to the essential cooling pond.

Citing only the "observed . . . level of the river at the entrance gates" and unidentified data provided by the

Texas Water Quality Development Board,[6/] Petitioner speculates that these factors "would seem to indicate that there is a strong possibility that there will not be sufficient river water to maintain the cooling pond."

As pointed out to this Board in Applicants' response to Contention 10 of Petitioner David Marke (Applicant's Response to Amended Petition for Leave to Intervene, January 5, 1979, p. 35) and at the Special Prehearing Conference of January 11, 1979, Applicants' analysis of the water supply from the Colorado River is set forth in detail in Section 2.4 of the PSAR and again in Section 2.4 of the FSAR. Under this analysis, based on the historical period from January 1949 through December 1971, which included what has been described by the Texas Water Development Board as the most severe drought of record to affect Texas, the water supply in the reservoir never failed, and, based on this analysis, the NRC Staff concluded in the FES "that an adequate safety-related water supply will be available" (Section 2.4.5).

The South Texas Project will utilize small amounts of well water for plant service water systems (about 130 gpm), hardly a basis for Petitioner's general, unspecified concern

---

6/ There is no "Texas Water Quality Development Board." Presumably, Petitioner refers to the draft publication by the Texas Water Development Board identified at the Special Prehearing Conference on January 11, 1979. (Tr. 148)

that the operation of the South Texas Project will deplete the aquifers and that the water withdrawn will cause a salt or brackish water intrusion on the aquifers. The potential effects of such withdrawals were fully considered at the hearing at the Construction Permit stage:

> "During plant operation, groundwater withdrawal will average only about 130 gpm. This withdrawal will be exclusively from the deep aquifer zone, while seepage from the reservoir is expected to be limited to the shallow aquifer zone. The Board inquired into the agricultural impact of the use of this amount of groundwater and the effects of groundwater withdrawal on the aquifer. This amount of water would be sufficient to irrigate about 50 acres of rice land. The anticipated drawdown in the deep aquifer during the life of the plant, both from plant usage and from pumping by other landowners, is not expected to affect existing wells which have historically been drilled to the bottom of the aquifer. Over the forty-year life of the plant, the salt water wedge in the lower aquifer, which is now located near the intra coastal canal, may be expected to intrude about one-half mile north as a result of pumping throughout Matagorda County. Pumping at the plant represents an insignificant contribution to total pumping in Matagorda County. A late change in App. Exh. 4, accepted into evidence by the Board Order of July 14, 1975 with concurrence of all Parties, altered the alleged historical usage of groundwater so that it now appears that no sharp increase in irrigational use occurred between 1964 and 1969. In the Board's opinion, this change does not affect the conclusion that groundwater use by the plant will be of negligible impact." (Citations omitted) 2 NRC 271 at 300-01.

Petitioner cites no errors in the analyses of surface and well water supplies or on the previously considered effect which the operation of the South Texas Project will have on these supplies. It cites no new evidence which might bring the analyses into question. The contention should be denied.

Contention 8

In this contention C.E.U. argues that "before operation of STP can be considered safe" changes must be made in the emergency plans to rectify an "oversight." The basis for the alleged requirement for changes is the follows:

> "C.E.U. . . . notes that Hiway [sic] 60 passes by STP and is the only route of evacuation for those persons ESE of the plant and places them in such a position that should there be a catastrophic failure of the plant that they must come from an area of up to 17 miles distant from the plant to within 3 miles of the plant in order to escape the effects of such a catastrophe. While the likelihood of such an accident is low, it has recently been released in the Review Assessment Report NUREG/CR 0400, that the means of calculation done at that time are no longer valid."

It is possible that this contention was inspired by a similar one which was admitted in the Fermi proceeding.[7/]

7/ See Detroit Edison Company, et al (Enrico Fermi Atomic Power Plant, Unit 2), Docket No. 50-341, Prehearing Conference Order Ruling upon Intervention Petitions, dated January 2, 1979, p. 12-13. A copy of that order was distributed at the prehearing conference held in this proceeding on January 11, 1979. (Tr. 100)

However, the facts are simply not comparable. Fermi dealt with an allegation concerning a "feasible escape route for the residents of the Stony Pointe area" -- an area approximately two miles from the plant and well within the approximately 3-mile low population zone (LPZ).[8/] The substance of Contention 8 relates to people outside the LPZ or more than three miles from the reactor containment structures (PSAR Section 2.1.3.3). It refers to persons in an "area of up to 17 miles distant from the plant to within 3 miles of the plant . . . ," all outside the LPZ.

There is no evidence whatsoever that any persons outside the LPZ will have to evacuate at all. Under existing NRC precedents, an applicant need not formulate emergency plans for areas outside the LPZ. New England Power Co. (NEP Units 1 and 2), ALAB-390, 5 NRC 733 (1977). And as was pointed out in the Fermi order referred to above, even considering the Commission's interim guidance related to proposed modification of the existing rules governing emergency planning, 43 Fed. Reg. 37473 (August 23, 1978), there is no basis for

---

8/ See Safety Evaluation (Section 21) and PSAR (Fig. 15-1c) in Fermi Docket (No. 50-341).

9/ It should also be noted that to the extent the petition indicates that Highway 60 may be an important evacuation route for persons ESE of the site, no person within the LPZ (indeed no one within 5 miles ESE of the site) need move toward the site to avail himself of the Highway 60 route (see SER Figure 2.2).

investigating the necessity for an emergency plan outside the LPZ absent particular information why such plan would be warranted.

No such particular information is presented here, other than a reference, wholly unspecific, to 'calculations done" at some earlier time which are "no longer valid." Conceivably this is meant to indicate that some improper reliance was placed on WASH-1400 in connection with previous licensing judgments made with respect to the South Texas Project. If so, this is an error. While WASH-1400 was still in draft form, the Commission made it clear that it could not be relied upon in licensing proceedings.[10/] Those instructions were never changed, and there is no indication that they were disobeyed in this proceeding.

The contention should be denied.

Contention 9

The petition refers to unidentified "construction malfeasances," "errors of intent" and the existence of a "willingness to falsify" records. It contends on this basis that "the operational safety of the STP as currently constructed cannot be assured . . . ." The only support for this allegation is a reference to "numerous inspection and enforcement reports" published by the NRC and placed in the

10/ 39 Fed. Reg. 30964 (August 27, 1974).

local public document room -- but again unidentified. Petitioner requests that "further measures" be taken prior to issuance of an operating license.

Petitioner's allegations in Contention 9 do not comply with the specificity requirements of 10 CFR §2.714. First, Petitioner does not allege a real contention at all, but merely suggests that some unspecified "further measures" be taken prior to issuance of the operating licenses to assure that the facility has been constructed in accordance with the construction permits. Apparently the objective of such further measures would be to achieve "the 100% effectiveness with which the contractor and or applicant must be policed." These statements are simply too vague to constitute a contention. So too are the references to "numerous [NRC] inspection and enforcement reports" without ever identifying the particular NRC reports relied upon, the specific subject matter dealt with in the reports or whether the issues raised in these reports were ever resolved.

As the Applicants pointed out in their response to the contentions of Petitioners Marke and CCANP (Applicants' Response to Amended Petitions for Leave to Intervene, January 5, 1979, p. 21), the periodic reports of the NRC Office of Inspection and Enforcement relating to items of noncompliance and correction are not evidence of any breakdown in the quality assurance system, but represent the

ability of the system to detect and respond to various construction problems.

Finally, the contention appears to be no more than an adoption of the unsupported allegations of misconduct made by Petitioner David Marke [11] even to the adoption of some of Marke's precise language; e.g., "willingness to falsify."[12] Like Marke's allegations, the assertions contained in the petition now at hand are totally unsubstantiated and without basis. They should be stricken.

III

Discretionary Intervention

If, notwithstanding the foregoing, it is assumed the petition contains a contention which satisfies 10 CFR §2.714 (b), the question is presented whether intervention should be granted (either to C.E.U. or to Mrs. Peggy Buchorn) as a matter of discretion. Applicants submit that the relevant considerations point overwhelmingly against the grant of such permission.

At the outset, we note that no credible showing of good cause for failure to file on time has been made, as required

---

11/ See "Supplimentary [sic] Petition by David Marke and Listing of Contentions", dated December 26, 1978, pp. 18-19, 29.

12/ Ibid, p. 19.

by 10 CFR §2.714 (a) (i). The petition does state that "none of the leadership of the group, and ostensibly the membership was aware that the proceedings were about to occur . . .", that no one within the group actually had access to the Federal Register Announcement . . .", and that "the complete lack of publicity, caused C.E.U. not to be aware of this undertaking." (p. 3) The thrust of the contention is that the only way the public could learn about the proceeding was by reading the Federal Register. This statement is erroneous. On August 4, 1978, a prominent notice was carried in the "Legal Notices" section of the Houston Chronicle, which has a substantial circulation in the South Texas area, announcing the opportunity for public participation in the operating license proceeding for the South Texas units. The notice expressly stated that the last day for filing petitions to intervene was September 1, 1978. A similar prominent notice was carried in the public notice section of the Bay City Daily Tribune on August 4, 1978; and an article in the Palacios Beacon of August 10, 1978, described the proceeding and stated that September 1, 1978, was the last day for filing petitions to intervene. The petition states that C.E.U. has 1,674 members in Bay City and 568 in Palacios. (p. 7)

In any event, publication in the Federal Register constitutes by law notice to "all persons residing within the States of the Union" (42 U.S.C. §1508), and in Long Island Lighting Co. (Jamesport Nuclear Station, Units 1 and 2), ALAB-292, 2 NRC 631, 646-47 (1975), the Appeal Board rejected the excuse by another large organization, a trade association, that it was ignorant of the notice published in the Federal Register. Accord, Project Management Corporation (Clinch River Breeder Reactor), ALAB-354, 4 NRC 383 at 389 (1976).

Nor does the other reason for allegedly not knowing of this proceeding constitute good cause: "The group has also had other activities of extreme import going on at the time of the announcement . . . ." (p. 3)

> "Most persons in our society are confronted with many and varied demands upon their time. The practical effect of acceptance of petitioner's explanation therefore would be free license to make the timing of an intervention petition a matter wholly dictated by personal convenience. The contemplation of the Commission's Rules of Practice is clearly otherwise. Nor could any adjudicatory process function effectively, if at all, in such circumstances."

Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642, 644 (1977).

These two asserted grounds for "good cause" do not reflect well on an organization with an alleged "constituency throughout the state of many thousands," which was organized in order to take "legal action" with respect to "energy and utility .ndustries." (p. 2) The lack of good cause is particularly significant here since so many of the contentions (e.g., Contentions 3, 5, 6 and 7) indicate that what is desired is merely "to rehash issues already ventilated and resolved at the construction permit stage." Alabama Power Company (James M. Farley Nuclear Plant, Units 1 and 2), 8 NRC 203 (1974).

10 CFR §2.714 (a) lists four other factors which should be placed on the scales in determining whether a late petition to intervene should be granted. These must all be considered against the standard laid down by the Appeal Board for operating license proceedings in Tennessee Valley Authority (Watts Bar Nuclear Plants, Units 1 and 2), ALAB-413, 5 NRC 1418 at 1422 (1977):

> ". . . there is particularly strong reason why discretionary intervention should not be allowed in the absence of some clear indication that the petitioner has a substantial contribution to make on a significant safety or environmental issue appropriate for consideration at the operating license stage."

In this connection the petition does reflect that the group has members who live in the area, are "involved in fishing and agricultural pursuits . . .", and are familiar

with its geography and meteorology (pp. 2, 4, 5, 6, 7, 10). In addition, it states that several individuals "with accreditable expertise in the fields of agriculture, horticulture, marine sciences, and organic chemistry . . . will make their services available as necessary." (p. 5) It is also stated that a veterinarian and several persons with "expertise in both the horticultural aspect of agriculture, as well as the animal facet of the same endeavor . . . have agreed to provide their services on a consultory basis to C.E.U. as necessary in the pursuit of these operating licenses." (pp. 9-10)

Yet the discussion of the contentions in Part II of this Response clearly demonstrates that little, if any, of this expertise is reflected in the formulation of the contentions. Most significant is the failure to use allegedly available expertise to review what has already been done, thereby resulting in proposed contentions which demonstrate misunderstanding of the issues considered in the construction permit proceedings and of the content of the basic licensing documents. The petition does make generalized statements of the availability of experts of some kind, but only "as necessary," coupled with emphasis on the fact that "members" of the group [or of its "constituency"] have lived and worked in the area. However, the serious doubts concerning the nature of the organization as set forth in Part I hereof

makes it impossible to assume that the organization "has a substantial contribution to make on a significant safety or environmental issue appropriate for consideration at the operating license stage." It cannot be concluded on this record that either Mrs. Buchorn or C.E.U. is likely to "assist in developing a sound record." (10 CFR §2.714 (a) (iii))

This Board has, of course, not yet ruled on whether an operating license proceeding will be conducted and, if so, what contentions will be considered. Consequently it is not now possible to determine "the extent to which petitioner's interest will be represented by existing parties" (10 CFR §2.714 (a) (iv)), or "the extent to which petitioner's participation will broaden the issues or delay the proceeding" (10 CFR §2.714 (a) (v)).[13/]

The remaining factor to be considered is "the availability of other means whereby petitioner's interest will be protected." (10 CFR §2.714 (a) (ii)) In the petition, it is argued that C.E.U. represents many individuals who live in the area of the plant and that no one else can effectively represent the interests of those individuals. (p. 4) However the argument is dependent on the assumption that C.E.U. will effectively represent such individuals. The petition does

---

13/ However, the statement in the petition that the listed contentions are not "complete and final" (p. 12) clearly suggests delay.

not so demonstrate. Even if it did, this factor could not outweigh the absence of good cause for untimeliness and the failure to demonstrate an ability to assist in developing a sound record in an operating license proceeding.

For the foregoing reasons, C.E.U.'s untimely petition for leave to intervene in this proceeding should be denied.

Respectfully submitted,

Jack R. Newman

Jack R. Newman
Harold F. Reis
Robert H. Culp
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Melbert D. Schwarz
Charles G. Thrash, Jr.
3000 One Shell Plaza
Houston, Texas 77002

Attorneys for the Applicant HOUSTON LIGHTING & POWER COMPANY, Project Manager of the South Texas Project, acting herein on behalf of itself and the other Applicants, THE CITY OF SAN ANTONIO, TEXAS, acting by and through the City Public Service Board of the City of San Antonio, CENTRAL POWER AND LIGHT COMPANY and THE CITY OF AUSTIN, TEXAS

OF COUNSEL:

LOWENSTEIN, NEWMAN, REIS, AXELRAD & TOLL
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

BAKER & BOTTS
3000 One Shell Plaza
Houston, Texas 77002

Dated: March 2, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
HOUSTON LIGHTING & POWER COMPANY, et al.	)	Docket Nos. 50-498-OL 50-499-OL
	)	
(South Texas Project, Units 1 & 2)	)	
	)	
	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Response to Petition for Leave to Intervene of Citizens for Equitable Utilities, Inc.", in the above-captioned proceeding were served on the following by deposit in the United States mail or by hand delivery this 2nd day of March, 1979:

Charles Bechhoefer, Esq.
Chairman
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. James C. Lamb, III
313 Woodhaven Road
Chapel Hill, North Carolina 27514

Dr. Emmeth A. Luebke
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Henry J. McGurren, Esq.
Hearing Attorney
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Honorable Burt O'Connell
County Judge, Matagorda County
Matagorda County Court House
Bay City, Texas 77414

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

Coral R. Ryan
Citizens Concerned About Nuclear Power
414 Kings Court #C
San Antonio, Texas 78212

Mr. David Marke
3904 Warehouse Row
Suite C
Austin, Texas 78704

Austin Citizens for Economical Energy
c/o Mr. David Marke
3904 Warehouse Row
Suite C
Austin, Texas 78704

D. Michael McCaughan
3131 Timmons Lane
Apartment #254
Houston, Texas 77027

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

Atomic Safety and Licensing Board Panel
U. S. Nuclear Regulatory Commission
Washington D.C. 20555

Mr. Chase R. Stephens
Docketing and Service Section
Office of the Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Mrs. Peggy Buchorn
Executive Director
Citizens for Equitable Utilities, Inc.
Route 1, Box 432
Brazoria, Texas 77422

Jack R. Newman

Dated: March 2, 1979