

NRC PUBLIC DOCUMENT ROOM

5-9-79

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)	)	

MOTION FOR SUPPLEMENTARY NOTICE  
OF INTERVENTION PROCEDURES

Applicant moves the Board to issue and publish in the Federal Register a Supplementary Notice of Intervention Procedures in the form attached hereto.

In its Decision of April 4, 1979, the Appeal Board, without reaching the question as to the continuing validity of the original Notice of Hearing or the necessity for republishing notice, determined that the limitations on contentions in the Board's notices of May 31 and September 11, 1978, were "too restrictive" and reversed certain Board findings denying intervenor status to named individuals. 1/ Applicant and staff in their respective motions for reconsideration 2/ and clarification 3/ sought guidance as to the Appeal Board's view of the requirement for a new notice of hearing.

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1/ ALAB-535, April 4, 1979.

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2/ Motion for Reconsideration of ALAB-535, April 12, 1979.

3/ NRC Staff's Motion for Clarification of ALAB-535, April 18, 1979.

The Appeal Board responded:

"The staff also asks that we tell it whether we intended there be a republication of the 'Notice of Intervention Procedures.' Had our thought been that such action was necessary or desirable, we would have said so. We thus obviously came to a contrary conclusion." [footnotes omitted; emphasis added] 4/

However, in a Memorandum and Order of May 3, 1979, ruling on a motion by intervenor, Tex Pirg, the Appeal Board, explaining its previous expressed view as to the desirability or necessity of renoticing, stated that the only question then before it "was whether we were directing republication . . . [w]e have not done so." (emphasis in original). The Appeal Board, taking notice of Tex Pirg's assertion that the earlier notices "discouraged potential intervention petitions", went on to warn of the possibility of subsequent reversals by the Commission or the courts and, having so cautioned, stated, "All this being so, it would not be appropriate for us to forbid republication." 5/

Although the Appeal Board's view of the continuing validity of the original Notice of Hearing and the necessity for a renoticing of intervention procedures is not clear, enough has been said to cast substantial doubt on the wisdom--indeed the feasibility--

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4/ ALAB-539, slip. op., p.10.

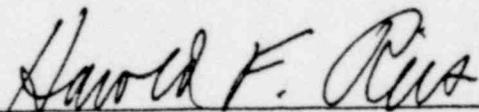
5/ ALAB-544, May 3, 1979.

of continuing under the notices now extant.

Accordingly, applicant respectfully requests that the Board issue a Supplementary Notice of Intervention Procedures in the form attached. The notice provides an opportunity, for those who can show by affidavit that they were dissuaded from filing petitions to intervene because of the limitations in the notices of May 31 and September 11, 1978, to gain admittance to the proceeding. The only limitations on issues would be to exclude matters presented and adequately considered in the prior proceeding and Partial Initial Decision in this matter, rendered in 1975.

NRC Staff counsel has authorized us to state that the Staff supports the granting of this motion and the issuance of the Supplementary Notice of Intervention Procedures in the form attached hereto.

Respectfully submitted,



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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
HOUSTON LIGHTING & POWER COMPANY ) Docket No. 50-466  
ALLENS CREEK NUCLEAR )  
GENERATING STATION, UNIT 1 )

SUPPLEMENTARY NOTICE OF INTERVENTION PROCEDURES

On December 28, 1973, there was published at 38 FEDERAL REGISTER 35521 a notice that Houston Lighting & Power Co. had filed an application with the Atomic Energy Commission for a permit to construct Allens Creek Nuclear Generating Station, units 1 and 2 (station) at a site in southern Austin County, Tex., west of the Brazos River and about 45 miles west of the center of Houston. The notice provided that petitions for leave to intervene in the proceeding could be filed by January 24, 1974. The only petition filed was by the attorney general of the State of Texas.

A hearing was held on the application by an Atomic Safety and Licensing Board (Licensing Board) on March 11 and 12, 1975. Following that hearing the applicant notified the Licensing Board that its plans for the construction of the station were indefinitely deferred. The Licensing Board, notwithstanding, issued a partial initial decision (LBP-75-66, 2 NRC 776, 1975) in which

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certain findings of fact were made, and in which it was concluded at page 812 that the findings "have demonstrated no reason why the (station) site is not a suitable location for nuclear reactors of the general size and type proposed \* \* \*" The Appeal Board's memorandum and order of December 9, 1975, ALAB-301, 2 NRC 353, in affirming the Licensing Board's partial initial decision, stated that those findings by the Licensing Board in its partial initial decision are subject to later revision should further developments or new information so warrant.

On August 19, 1977, the applicant advised the Board that it wished to resume licensing of only one of the two units previously planned and that it had amended its preliminary safety analysis report to show only one unit at the same site. The amendments also included (among others) changes in plant layout and orientation, changes in the circulating water intake and discharge structures, and a reduction in the size of the cooling lake from 8,250 to 5,120 acres. These new plans for the proposed station may raise concerns that did not exist with respect to the former ones.

This Atomic Safety and Licensing Board (Board) issued on May 31, 1978, a "Notice of Intervention Procedures".<sup>1/</sup>

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<sup>1/</sup> 43 Fed. Reg. 23666 (May 31, 1978).

As thereafter amended on September 11, 1978, 2/ the notice invited the filing of new petitions to intervene but indicated that they had to be limited in scope to contentions which either (1) arose from proposed changes in plant design; or (2) were based upon evidence or information not available prior to the issuance of ALAB-301 in December 1975.

Some thirty-three petitions for leave to intervene were filed in response to the notices of May 31 and September 11, 1978, of which three were granted by the Board; the balance were denied either because the contentions therein did not fall within the permissible scope of contentions or for other reasons. 3/ On consideration of appeals from the Board's determination on these petitions, the Appeal Board reversed and remanded as to petitioners who were denied intervenor status on grounds that their contentions fell outside the permissible scope of issues. 4/ The Appeal Board found that the notices of May 31, and September 11, 1978, were "too restrictive."

In denying Applicant's "Motion for Reconsideration of ALAB-535" and the "NRC Staff's Motion for Clarification of

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2/ 43 Fed. Reg. 40323 (September 11, 1978).

3/ ASLB Memorandum and Order, February 9, 1979.

4/ ALAB-535, April 4, 1979.

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ALAB-535" the Appeal Board left unanswered the question whether a new notice of hearing was required. 5/ In a subsequent Memorandum and Order, however, the Appeal Board noted the risk inherent in proceeding under the corrected notices and instead "left [it] to the Board below and to the applicant and staff to determine for themselves whether, in the totality of circumstances, it is worthwhile for them to assume any risks which may inhere in continuing to proceed under the [corrected notice]." 6/

For the reasons set forth above, the Board believes that it is in the public interest to issue this supplemental notice of intervention procedures for those members of the public who may have forborne filing of petitions for leave to intervene because of the limitations on the scope of contentions found by the Appeal Board to be "too restrictive".

Accordingly, any person (other than those persons and organizations which filed petitions for leave to intervene pursuant to the above notices of May 31 and September 11, 1979), who did not file a petition pursuant to those notices because of the restrictions on permissible contentions contained therein, and who wishes to intervene as a party to this proceeding must file a written petition for leave to intervene in accordance with the provisions of 10 CFR 2.714. 7/

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5/ ALAB-539, April 23, 1979.

6/ ALAB-544, May 3, 1979.

7/ Petitions for leave to intervene filed by persons unable to qualify under this supplementary notice will not be granted unless the Board determines that the petitioner has made a substantial showing of good cause for failure to file on time and after the Board has considered those factors specified in 10 CFR 2.714(a)(1)(i)-(v).

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Such person shall file an affidavit which states that he failed to file a petition for leave to intervene pursuant to the Board's notices of May 31 and September 11, 1979, because of the restrictions on permissible contentions contained in those notices. A petition for leave to intervene shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceedings, and any other contentions of the petitioner including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1) The nature of the petitioner's right under the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011-2281 (1970) to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. Any such petition must be supplemented (by the time set forth in 10 CFR §2.714(b), as amended) by a list of the contentions, which the petitioner seeks to have litigated, with the bases for each contention set forth with reasonable specificity.

The issues in this proceeding are as set forth in the Notice of Hearing as published in the Federal Register of December 28, 1973, provided, however, absent a showing of newly discovered evidence or a material change in circumstances, the Board will not

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entertain issues fully considered and settled in the above mentioned hearings in this matter on March 11-12, 1975, and as to which findings were made by this Board (See LBP-75-66, 2 NRC 776 (1975), and affirmed by the Appeal Board (ALAB-301, 2 NRC 353).

A petition for leave to intervene must be filed with the Secretary of the Commission and others as specified below by June \_\_\_\_\_, 1979. A petition for leave to intervene which is filed thereafter must be justified under the factors specified in 10 CFR §2.714(a)(1)(i)-(v).

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Any petitions shall be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR §2.708, an original and twenty (20) conformed copies of each such paper with the Commission. A copy of any

petition for intervention should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; to Counsel for Applicant, Jack Newman, Esq., Lowenstein, Reis, Newman, Axelrad and Toll, 1025 Connecticut Avenue NW., Washington, D.C. 20537, and J. Gregory Copeland, Esq., Baker & Botts, 1 Shell Plaza, Houston, Tex. 77072; and to Richard Lowerre, Esq., Assistant Attorney General for the State of Texas, P.O. Box 12548, Capital Station, Austin, Tex. 78711.

Papers detailing the application for a construction permit may be examined by the public at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of those same documents are also available at the Sealy Public Library, Sealy, Tex. 77474.

It is so ordered.

FOR: THE ATOMIC SAFETY AND LICENSING  
BOARD

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Sheldon J. Wolfe, Esq.,  
Chairman

Dated at Bethesda, Maryland  
this \_\_\_\_\_ day of \_\_\_\_\_, 1979

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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 the foregoing Applicant's Motion for Supplementary Notice of Intervention Procedures in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, or by hand-delivery this 9th day of May, 1979.

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Hon. Leroy H. Grebe  
County Judge, Austin County  
P.O. Box 99  
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Appeal Board  
U.S. Nuclear Regulatory  
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Washington, D. C. 20555

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