UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

SERVED FEB 12 1979

In the Matter of	)	
	)	
HOUSTON LIGHTING AND POWER COMPANY	)	Docket No. 50-466
	)	
(Allens Creek Nuclear Generating Station, Unit 1)	)	

ORDER RULING UPON
INTERVENTION PETITIONS

Our Memorandum and Order dated November 30, 1978 sets forth the procedural background of this case. For the purposes of the instant Order, it is necessary only to note that (a) after publication of a Notice of Intervention Procedures on May 31, 1978 (43 Fed. Reg. 23,666), five petitions for leave to intervene were filed,[1/] (b) after publication of a Corrected Notice of Intervention Procedures on September 11, 1978 (43 Fed. Reg. 40,328), numerous petitions for leave to intervene were filed, (c) petitioners were notified that their petitions must be supplemented by a list of contentions which should be limited to those matters that had arisen because of changes in the proposed plans for the Allens Creek Nuclear Generating Station (ACNGS) and to new evidence or new

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1/ One of the five initial petitioners, the State of Texas, was allowed to continue to participate in this proceeding as an interested State pursuant to 10 C.F.R. § 2.715(c). (Memorandum and Order of August 14, 1978).

information that had not been available prior to the Appeal Board's Memorandum and Order of December 9, 1975, ALAB-301, 2 NRC 853 (1975), and that (d) during the course of the Special Prehearing Conference held on November 17 and 18, 1978 (Transcript pages 335-703) petitioners for leave to intervene were allowed, inter alia, to respond to the Applicant's and Staff's objections to their interest and/or proposed contentions.

For a petition for leave to intervene to be found acceptable, 10 C.F.R. § 2.714(a)(2) requires that ". . . petition shall set forth with particularity the interest of the petitioner . . ., how that interest may be affected by the results of the proceeding . . ., and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." In Portland General Electric Company, et. al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976), the Commission stated that, to have standing, a petitioner must satisfy two tests - one, some injury must be alleged that has occurred or will probably result from the action involved, and, second, an interest must be alleged that is "arguably within the zone of interest" protected by the statute. Further, in order to be admitted as a party, not only must a petitioner's contentions be limited to those matters that have arisen because of changes in the proposed plans and to new evidence or new information, but his contentions must set forth as well the bases for

each contention with reasonable specificity as required by 10 C.F.R. § 2.714(b).[2/]

TEXAS PUBLIC INTEREST RESEARCH GROUP

A. Interest

PIRG asserts that it has standing in that several identified members of its State Board of Directors and several of its identified contributors, who live within twenty to fifty miles of the proposed plant, will be subjected to radioactive emissions from the proposed plant, which would significantly endanger their health. It lists those health and safety matters as to which it wishes to intervene. To this extent, we deem that PIRG has provided sufficient standing for intervention in its first and second amendments to its petition for leave to intervene.

B. Contentions

On September 26, 1973, pursuant to a Stipulation between Staff and PIRG, (a) the Staff agreed that PIRG had met the interest requirements of § 2.714, (b) Staff agreed in part and objected in part to the admissibility of 11 PIRG contentions, (c) PIRG withdrew all other contentions previously advanced, and (d) the Staff reserved the right to oppose on the merits PIRG's contentions at the forthcoming

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2/ Hereinafter, in our discussion, we will merely summarize the contentions.

hearing.[3/] While the stipulation is binding upon the parties thereto, we do not deem that we are bound thereby.

1. In substance, based upon six reasons, PIRG asserts that the South Texas site is an obviously superior alternative to the Allens Creek site. Applicant objects to the admissibility of this contention in that it is not based on new evidence or information which was unavailable prior to December 9, 1975. However, the initial decision authorizing the construction of the South Texas Project, Units 1 and 2, was not issued until December 17, 1975 (2 NRC 894) and thus, prior to that date, it would have been conjectural to have raised this contention in the instant case. Indeed, pp. S.9-10 and 9-11 of the Final Supplement to the FES reflect that the South Texas site previously had not been considered as an alternate site. The contention is admitted as an issue in controversy.

2. In substance, PIRG alleges that, because of reduction in size and changed location, the cooling lake will be useless as a viable recreational fishery. Obviously this contention is bottomed upon changes in proposed plans and is therefore admissible, but only as to subcontentions b, c, d and e. The essence of subcontention a. is admitted as an issue in our discussion of Contention 4, infra. Subcontentions f. and g. have been discussed in findings 39, 40 and 41 of our Partial Initial Decision (PID), 2 NRC 776 (1975), and in our judgment the change in temperature regimes described in the new design is insufficient to disturb

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3/ In its submissions to this Board, Applicant argued that PIRG lacked standing and that none of its contentions was admissible.

these findings.

3. PIRG alleges that a cooling tower would be a preferred alternative to the proposed cooling lake. This contention is not based upon new evidence or information, and, indeed, was considered in finding 64 of our Partial Initial Decision (PID), 2 NRC 776 (1975). This contention is inadmissible and is rejected.

4. PIRG asserts that, if the cooling lake is approved by the Board, we should require that it be redesigned to extend the dam northward in order to capture more runoff for the lake and to improve fish spawning. We admit this contention. It is grounded upon a change in the plans for the lake.

5. In substance, PIRG alleges that neither Applicant nor Staff has given adequate consideration to the combustion of solid waste as an alternative energy source, especially in light of the fact that only one nuclear unit is now proposed. Applicant points out that solid waste combustion generation is not a new principle and that, at page 6 of the Stipulation, PIRG admits that such facilities have operated successfully in Europe for over forty years. However, we admit the contention since it is predicated upon a change in design - viz. that while there was not enough solid waste being generated in Houston in 1975 to totally replace or to have a significant impact upon the amount of power Applicant proposed to generate with two nuclear units, combustion of solid waste is a viable alternative replacement for the generation of electricity by one nuclear unit under the changed plans.

6. PIRG alleges that the Final Environmental Statement and the current Safety Evaluation Report do not consider the effects of a large airplane crashing into the containment vessel. It avers that the FAA now indicates that large plane traffic has increased at least thirty percent in the last three years and will be several hundred percent higher before the plant is closed in about forty years, and that new airports have been proposed to be constructed much closer than present airports. Applicant contends that the contention is vague, speculative and not based upon new information. We disagree. While it is not our function to reach the merits of this contention at this stage of the proceeding (Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973)), PIRG has made at this stage the necessary showing of new information. The contention is admitted. However, to the extent that this contention implicitly or expressly relates to intentional airplane crashes, it is rejected as constituting a challenge to 10 C.F.R. § 73.55 since this act of sabotage is not one against which the plant must be protected. Such a challenge is impermissible under 10 C.F.R. § 2.758 since there is no showing of special circumstances which would permit such a challenge.

7. PIRG avers that energy conservation has not been adequately considered as an alternative to the proposed facility. The contention is admitted as an issue in controversy. While we agree with the Applicant that "energy conservation" is not a contention of recent vintage

and that the instant contention is not based upon new information or evidence previously unavailable, Applicant's change in its design plans (i.e., deletion of one unit) militates in favor of hearing evidence upon this issue.

8. PIRG asserts that the license should be conditioned upon the incorporation of an automatic redundant scram in the plant's design because Applicant will not have experienced operators who could respond in the event of Anticipated Transients Without Scram, which occur more often in new reactor designs. The contention is rejected as being premature - the experience and qualifications of operating personnel are examined in depth by the Staff at the operating license application stage. Mississippi Power and Light Company and Middle South Energy, Inc. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-232, 8 AEC 635 (1974). Further, to the extent that the contention implicitly questions the ATWS design, it should be noted that, pursuant to Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 775 n. 28 (1977), via the vehicle of the SER or by other evidence, the Staff must set forth its percention of the nature and extent of the relationship between each significant unresolved generic safety question and the eventual operation of the reactor under review.

9. PIRG asserts that the Staff in its NEPA evaluations, has inaccurately concluded that a nuclear power alternative is less costly, both economically and environmentally than coal-fired power generation.

It supports this assertion by claiming that nuclear plants operate at only 50 percent of their planned capacity while coal-fired stations produce at 70 percent capacity; that capital costs of coal-fired plants planned by other Texas utilities are 40 percent less than those projected by Applicant and Staff, and prospects of using lignite fuel would be a further saving in operating costs. Furthermore, PIRG asserts that by using small coal-fired units for peak loads, installation of solar heating and cooling units in the power grid would be encouraged, thus being an environmental benefit in contrast to the environmental liability of a base load nuclear station. We reject this contention. It is predominantly based on economic costs of coal v. nuclear plants. It appears to assume the utility is promoting the more costly means (i.e. nuclear) of providing the power needed by its consumers. We are not called upon to substitute our judgment for that of the utility and its supervising State regulatory commission in determining the most financially advantageous way for a utility to supply its customers' need for power. However, under NEPA we are obliged to weigh environmental costs among feasible alternatives for meeting power needs. Here cost balancing is important only to the extent it results in an environmentally superior alternative. Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162-163 (1978). PIRG's assumption that small coal-fired stations to supply peaking power would be environmentally less costly by somehow encouraging more use of solar energy is speculative at best. It is supported only by citing a 1977 study by Kahn which "indicates"

such stations "will be more likely to encourage" supplemental solar units in the power grid.

Though we reject this contention, we have a Board question to be addressed by the Staff and/or Applicant. Do the availability of lignite and the environmental costs of its use justify its consideration as an alternative fuel to supply Applicant's needs?

10. PIRG asserts that Applicant has not demonstrated compliance with 10 C.F.R. Part 50, Appendix A, Criterion 31, with regard to intergranular stress corrosion and cracking. The contention is rejected. The bibliography of the very report (NUREG 75/067) dated December, 1975 that PIRG relies upon to show that there was new evidence upon this problem reflects that all the referenced documents were available prior to December, 1975. The mere fact that PIRG was unaware of them prior to the issuance of NUREG 75/067 does not convert them into being new information.

11. PIRG avers that Applicant has not adequately assessed the effects of flow-induced vibration on jet pumps, spargers, fuel pins, core instrumentation and fuel rods. PIRG does not deny that information relating to these problems may have been available to others prior to December, 1975 (Tr. 434). Both Staff and Applicant in their submissions cite documentation showing that these problems had been reported and/or discussed prior to December, 1975, and thus PIRG's unawareness does not serve to convert this documentation into being new information. While

the contention is rejected, as noted in our discussion of Contention 8, supra, to the extent that any of these problems present significant unresolved generic safety questions with regard to the instant reactor, Staff is obliged to address them in the SER or in written testimony.

On November 1, 1978, PIRG filed six additional contentions. Applicant and Staff objected to the admissibility thereof.

Additional Contention 1. PIRG contends that the Final Supplement to the FES does not adequately discuss alternatives chosen for the transportation of construction related components to the site, specifically barge transport of large reactor components. In its response, Applicant represents to us that its overland transportation plans remain unchanged since the initial proceedings herein, and Staff advises that the Applicant has not proposed barging of nuclear components to the site. The contention, being purely speculative and without specific basis, is rejected.

Additional Contention 2. PIRG asserts that the construction permit should be conditioned upon a reduction in gaseous radiation emissions to ensure compliance with 40 C.F.R. 190, and, in support, cites the EPA comments on the Draft Supplement to the Final Environmental Statement at page S.A-6. EPA's comment reads as follows:

> Direct Radiation
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> We recognize the difficulties associated with trying to predict, in advance of station operation or even construction,

> what the off-site direct radiation doses will be from nitrogen-16. Accurate dose estimates will probably not be available until results from the postoperational radiation monitoring program have been completed. It should be noted, however, that, based on the dose estimations reported in the draft supplement, the direct dose to an individual residing near the site boundary, when added to doses from other sources from the plant could exceed EPA's standard for the uranium fuel cycle (40 C.F.R. 190). The Applicant should be advised that, in event postoperational experience indicates actual off-site dose rates in excess of 25 mrem/yr will be produced at close-in locations where persons reside, corrective action such as additional shielding or operational limitations may be required in the future. The final statement should address direct radiation dose in the context of EPA's uranium fuel cycle standards. We believe that direct radiation doses to humans in the site environs can be controlled by proper plant design and layout. Thus, we urge the Applicant to consider carefully the design options to minimize the effects of this dose exposure pathway.

As can be seen, EPA's comment only urges Applicant to consider carefully the design options to minimize off-site doses so as not to violate the standards in 40 C.F.R. 190. Said comment did not state that the proposed plant would violate the regulation. Further, in issuing 40 C.F.R. 190, EPA concluded that (42 Fed. Reg. 2859, January 13, 1977):

> In the case of light water reactors, models and monitoring requirements for

> demonstrating conformance with Appendix I of 10 C.F.R. Part 50 are generally adequate for demonstrating conformance with these standards.

Since there is no allegation by PIRG that Applicant either will not meet or is unable to meet the criteria of 40 C.F.R. 190 by satisfying the requirements of Appendix I to Part 50, there are no bases for the contention, and it is rejected.

Additional Contention 3. PIRG asserts that the Applicant has not adequately complied with 10 C.F.R. 50 Appendix E in that the "evacuation description" fails to assure compatibility of proposed emergency plans with site location respecting access routes, population and land use; that increasing population densities, congestion of highways in the city of Houston and westward to the site and heavy recreational use of the park associated with ACNGS will result in an inadequate evacuation response in event of a maximum credible accident at ACNGS. We reject this contention. The Board has already determined, on the basis of population projections, that the effects of a large influx of transients using the recreational facilities associated with the site including the parks and lake would "not significantly affect the Applicant's ability to take appropriate protective measures on behalf of the population (both transient and resident) in the event of an emergency". (PID, 2 NRC 776, finding 84 at p. 799). In this context, an emergency included considering the feasibility of evacuating the low population

zone (LPZ) which includes transients using the parks and lake to their maximum projected use. The LPZ in this case includes an area with a 3.5 mile radius centered at the plant. The Appeal Board has held that there is no requirement that consideration be given in a licensing proceeding to the feasibility of devising an emergency plan for the protection of persons outside the low population zone. New England Power Company, et. al. (NEP, Units 1 and 2) and Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-390, 5 NRC 733 (1977), and the cases cited therein. Thus, although PIRG might have presented evidence that more recent population projections and traffic congestions in the city of Houston and environs are greater than originally projected by Applicant and Staff, this is insufficient to require that we disregard the Commission's position on the emergency plan.

Additional Contention 4. PIRG asserts that Applicant has not provided adequate assurances to protect the proposed plant against sabotage, particularly because the site configuration of the plant facing the cooling lake provides sabotage possibilities for scuba-equipped saboteurs and for other unspecified scenarios. Said acts of sabotage, PIRG alleges, might cause releases of radioactivity in excess of 10 C.F.R. 100 guidelines. This contention is rejected. We are unaware of any applicable regulation, and none has been cited by PIRG, that requires an Applicant for a construction permit to submit at that stage preliminary security plans which would consider and/or specify the exact measures

to be taken for safeguarding against radioactive releases resulting from sabotage.

Additional Contention 5. PIRG contends that Staff's risk assessment of accidents is grounded on WASH-1400 (Reactor Safety Study) and therefore defective, and that the license should be deferred pending reassessment of values in the environmental risk analysis. Support for this contention is based on the NRC's Risk Assessment Review Group Report issued September 1978, which describes certain defects in the methods and conclusion of WASH-1400. The Commission has this report under consideration, and has yet to determine whether any modification should be made in the current method of accident risk assessments. In any event, this Board is not the appropriate forum before which to litigate the validity of the Risk Assessment Group Report as a basis for deferring further nuclear plant licensing. We reject the contention.

We, however, have Board questions to be addressed by the Staff. Did the Staff use WASH-1400 in arriving at its conclusions regarding environmental risks, as stated in S.7 of the Supplement to the Final Environmental Statement? If so, do these conclusions need to be modified as to the result of recent criticisms (Lewis Report) of WASH-1400 and the NRC's recent policy statement regarding same?

Additional Contention 6. PIRG contends that the containment vessel will crack allowing the escape of radioactive gas in excess of 10 C.F.R. 100 requirements because of Applicant's failure to account

for the Mannings roughness factor within the weir wall and vent pipe. The contention is rejected because, in the first place, there is no showing that this alleged problem has arisen because of changes in the proposed plans. Second, as conceded by PIRG (Tr. 454), this contention is not based upon new evidence or information not available prior to December, 1975.

PIRG is admitted as a party and certain of its contentions identified above are admitted as issues in controversy.

WAYNE E. RENTFRO

A. Interest

Mr. Rentfro asserts that he has standing because the proposed transmission corridor would be very near to his home and divide his property, because the transmission lines could present health hazards to his family and horse, would cause personal discomforts, and would detract from the appearance of his neighborhood. (Amended petition dated September 22, 1978). He has provided sufficient standing.

B. Contentions

On September 29, 1978, pursuant to a Stipulation between Mr. Rentfro and Staff, (a) the Staff agreed that the petitioner had met the interest requirement, (b) Staff agreed that two contentions should be admitted as issues in controversy, (c) Mr. Rentfro withdrew all other

contentions previously advanced, and (d) the Staff reserved the right to oppose the contentions on the merits at the forthcoming hearing.[4/] While the stipulation is binding upon the parties thereto, we do not deem that we are bound thereby.

1. In substance, Mr. Rentfro contends that Transmission Corridor 1A should be relocated because the population within a one mile radius of his home has increased from ninety-six people in 1974 to more than two hundred eighteen, because there are thirty-two new homes and six are being constructed, and because the population growth appears to be accelerating. (In passing we note that Petitioner has not been authorized by the other homeowners to represent them and he cannot act as a private attorney general to represent their purported interests. Portland General Electric Company, et. al. (Pebble Springs Nuclear Plant Units 1 and 2), ALAB-333, 3 NRC 804, 806 n. 6 (1976)). To the extent that Mr. Rentfro is personally affected, the issue has not arisen because of changes in the proposed plans for the plant or because of new evidence or information. Responding to a query by the Board during the course of the Special Prehearing Conference (Tr. 361), in a letter dated November 30, 1978, Mr. Rentfro advised that to his knowledge the proposed transmission route remains unchanged since the last hearing. The contention is rejected.

4/ In its submissions, Applicant argued that Mr. Rentfro lacked standing and that his contentions were inadmissible.

2. Petitioner contends that the Applicant has not adequately analyzed the potential health hazards associated with living in proximity to high-voltage transmission lines. After reading all of Mr. Rentfro's submissions, including the one dated December 26, 1978,[5/] we conclude that he has not expressly shown that the health hazards contention is based upon new evidence or information that significantly alters information that had been available prior to December, 1975. Furthermore, Mr. Rentfro has made no attempt to connect the applicability of studies on 675 kVA and 1000 kVA lines to Applicant's 345 kVA lines. The contention is rejected.

While Mr. Rentfro is not admitted as a party, he may, if he so desires, make a limited appearance statement pursuant to 10 C.F.R. § 2.715(a).

T. PAUL ROBBINS

A. Interest

In his submissions of June 30 and August 28, 1978, Mr. Robbins asserts that the proposed nuclear plant will cause economic hardship to himself and the citizens of Texas by contributing to the depletion of the State's water table. The Petitioner lacks standing and accordingly is not admitted as a party. In the first place, he cannot act as a private

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5/ We deny Applicant's Motion To Strike Mr. Rentfro's letter, filed on January 16, 1979. The letter was an untimely supplementation of the contention but we, to date, have recognized that pro se petitioners have not had sufficient time to acquaint themselves with our Rules of Practice. However, all parties and petitioners are cautioned that they must comply hereafter with our Rules.

attorney general representing the alleged interests of other Texas citizens. Second, to the extent he alleges economic harm to himself, allegations of economic harm which do not specify an environmental relationship, do not come within the "zone of interest" protected by the Atomic Energy Act. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420 (1977); see Chairman Rosenthal's opinion in Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 640 (1975). Finally, while in our discretion we could grant intervention where a petitioner shows significant ability to contribute on substantial issues of law or fact which would not otherwise be properly raised or presented (Pebble Springs, supra, at p. 617), Mr. Robbins has not shown that he has the expertise or information not available to other parties and, as indicated above, the Board has admitted PIRG Contention 1 (suballegation 1 d.) which relates to the issue of water use. While not admitted as a party, Mr. Robbins may, if he so desires, make a limited appearance statement pursuant to 10 C.F.R. § 2.715(a).

JOHN F. DOHERTY

Armadillo Coalition of Texas (ACT),
Houston Chapter

A. Interest

By his submittals dated June 26, 1978, July 1978 (dated

June 9, 1976 but received by NRC on July 6, 1976), and August 1978, Petitioner represents that he as an individual and as representative of the Houston Chapter of ACT should have standing in this proceeding. Names and addresses of three other members of said Chapter are provided, with the further, but unsupported allegation that said members have authorized Petitioner to represent their interests. There is no evidence substantiating the official existence, form and purpose of a statewide entity called ACT, nor that said entity has duly authorized the formation of a Houston Chapter, not that said Houston Chapter has authorized Petitioner to be its leader or spokesman. Hence the Board must deny standing to ACT as an organization seeking intervention, but will grant the request that its members Elaine Carpenter, Paul Rowe, and Wayne Collins be permitted to make limited appearances.

We now turn to the question of the adequacy of the showing of interest of Mr. Doherty in his individual behalf. While Applicant would have us deny standing to Mr. Doherty, the Staff, in its September 19, 1978 stipulation with Petitioner, asserts that the allegations of Mr. Doherty regarding standing are adequate, despite our inability to find further information that might overcome Staff's previous opposition on this point on July 17, 1978. The Board grants standing to Mr. Doherty only in his own behalf, recognizing that his residence in the vicinity (46 miles) of the proposed plant site reflects at best a minimal

differentiation, with respect to the populace at large, of his interest regarding health and safety concerns.

B. Contentions

(Per the above cited stipulation between Petitioner and Staff, which is binding only on the parties thereto, seven proffered contentions (numbered 1 through 7) remain to be addressed. Staff, in its response of September 29, 1978 to its own stipulation would deny the admission of Contentions 1, 2, 5 and 7. Applicant, in its response to said stipulation, dated November 13, 1978, would exclude all of the contentions. We now address these contentions.)

1. and 2. These contentions allege, in part, that the ACNGS will not meet the NRC's criteria with respect to maintaining radioactive release values as low as reasonably achievable. Stated thusly, this might have been an acceptable contention had there been some basis provided with reasonable specificity for the allegation and had the contention been proffered prior to December, 1975. It meets neither criteria, nor is the existence of new information cited to support its admission now. These contentions further allege, in part, that new (post December 1975) medical findings show an increased risk of radiation induced cancer such that a further reduction of radioactive effluent releases must be undertaken or else a pressurized water reactor should be employed. We need not address the merits or timeliness of the post 1975 medical findings because the thrust of these allegations is that the NRC's own

regulations do not provide adequate protection to the health and safety of the public with respect to the operation of the proposed ACNGS. Such allegations constitute impermissible challenges to Commission regulations, absent a showing of special circumstances. 10 C.F.R. § 2.758. Contentions 1 and 2 as stated in the above cited stipulation are thus deemed inadmissible and are rejected.

On November 21, 1978 Mr. Doherty filed a pleading requesting the admission of Contention 1 in amended form and requested that Appendix I to 10 C.F.R. Part 50 be waived as inapplicable to this proceeding. We view the amended contention as being virtually a new contention asserting that Houston's alleged inability to comply with national air quality standards for five years has impacts that combine synergistically with radioactive effluents from the proposed plant to produce a more serious threat to Petitioner's health than would derive from the plant effluents alone (presumably petitioner here means a more serious threat than would derive from the sum of each impact taken separately). Setting aside any consideration of timeliness, we find that Petitioner has provided no basis whatsoever to support the allegation of synergism. Momentarily granting such a basis for sake of discussion, we find the amended contention to be without foundation since Houston's five-year time extension for air pollution compliance would seem to expire in advance of the readiness of the ACNGS for operation.

The requested waiver of Appendix I, in order to be granted, must meet the requirement of 10 C.F.R. § 2.758. We find significant deficiencies in Petitioner's motion. There is no prima facie showing that adherence to Appendix I would circumvent the purpose for which it was adopted, namely, protection of the health and safety of the public with respect to radiological releases. Absent a basis (irrespective of merit) for the allegation of synergistic impacts, the contention that things ought to be made better (than Appendix I provides) falls far short of the requisite showing. No plausible argument is advanced to connect Houston air pollution with ACNGS effluents in a manner that credibly supports the claim of special circumstances.

The Board rejects the admission of Contentions 1 and 2 as stated in the stipulation, rejects the admission of the subsequently amended Contention 1, and denies the motion for the waiver of applicability of Appendix I of 10 C.F.R. Part 50 to this proceeding. We note that Staff and Applicant have concluded similarly.

3. Petitioner contends that the results of certain tests on General Electric type fuel pins demonstrate that the proposed energy density limit for ACNGS fuel under normal operation is sufficiently high as to result in fuel clad rupture if a power excursion occurs. The contention lists certain consequences of said rupture and requests the imposition of more conservative operating parameters, especially since the "ACNGS has more compact rods in each fuel bundle and a higher core

density than any other operating BWR in the United States". We note that the Staff would admit this contention, whereas the Applicant would exclude it on the basis that the test information predates the December 1975 starting date for qualification as "new" information. Applicant further disqualifies the test information because only one pin out of three neighbors showed a lower than expected clad perforation threshold. We reject the contention because it is not based upon new evidence or information (Tr. 376). The mere fact that until the summary of 1978 Petitioner was unaware of this test information which had been published in 1970. does not serve to convert this data into becoming new information. Moreover, we reject the contention because Petitioner fails to take account of the acceptance criterion limitation of 280 cal/gm energy density for prompt failure (NRC Standard Review Plan, Section 15.4.9, September 1975) as noted by Applicant; rather Petitioner seems to confuse the serious consequences of clad rupture with the significantly less serious consequences resulting from clad perforation, which might occur at energy density thresholds in the range of 147 to 175 cal/gm. Thus there is also a lack of an adequate basis for this contention.

4. Petitioner addresses his perception of a need for Applicant to adopt mitigating measures appropriate to the resolution of the ATWS generic issue that "can be incorporated in the design without modifications to main components of the nuclear steam supply system (NSSS)

during construction (1) to avoid additional costs and (2) to assure full implementation of the generic resolution" (quoted from Contention). The Staff would admit this contention, whereas Applicant rejects it on the basis that it is required to comply with NRC requirements. The Board observes that Petitioner has no basis for proscribing modifications to the NSSS and for requiring the avoidance of additional costs. Petitioner fails to provide any basis for challenging the compliance of Applicant with NRC requirements. We deny the admission of this contention but on our own initiative will require that the Applicant testify on the record as to its intent and willingness to comply with NRC requirements.

5. This contention cites a possible problem that relates to suppression pool hydrodynamic forces that might compromise the effectiveness of control rod drive mechanisms and travelling in-core flux probes. Both Staff and Applicant would deny this contention on the basis that Petitioner has raised nothing not already known prior to December 1975. Applicant further notes that this concern was both identified and discussed by the NSSS vendor in a report dated July 1975. We are persuaded by the lack of new information to exclude this contention.

6. The potential for generating damaging missiles from the breakup of the recirculating pump impeller in an overspeed situation

forms the thrust of this contention, which requests a basis for assurance that such missiles cannot cause unacceptable damage. Staff would accept this contention; whereas Applicant rejects it on the basis that there is no litigable issue based on new evidence, the damage mitigating measures having been dealt with in PSAR amendments of 1974. The contention is not based upon new evidence and accordingly we reject it.

7. Petitioner alleges that the possibility of the ECCS having to call upon suppression pool water for post accident core cooling causes -- by virtue of the relatively low temperature of this water -- an unnecessarily high risk to his safety and environment interests. The low temperature of this water, Petitioner argues, would cause a reactivity increase that might result in fuel meltdown, followed, in turn, by a further reactivity increase. Both Staff and Applicant would exclude this contention on the basis that it is not based on new information and could have been raised earlier than December 1975. In addition, the Applicant identifies PSAR and GESSAR information (pre-December 1975) that deals with the injection of suppression pool water under the circumstances of an inadvertent triggering of the ECCS. We agree and reject the contention since it is not based upon new information unavailable prior to December 1975.

In summary, we find that Petitioner Doherty has no acceptable contentions and he is denied status as a party-intervenor. His request to make a limited appearance is granted.

LOIS H. ANDERSON

A. Interest

While Mrs. Anderson does not specify how far her residence is from the proposed plant site, she does assert that she resides in Houston, which we understand is about forty-five miles east of the site. (Final Supplement to FES, p. 5.1-1). A distance of fifty miles between the city of residence and the plant site will not preclude a finding of standing based upon residence in that city. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n. 4 (1977). Further, while the Petitioner's supplementary petition does not meet the strict requirements of § 2.714(a)(2), we do not hold a pro se petitioner to those standards of clarity and precision to which a lawyer might reasonably be expected to adhere. Public Service Electric and Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973). The Appeal Board has held that a person whose base of normal, everyday activities is within such a radius of a facility as alleged by Mrs. Anderson, can fairly be presumed to have an interest which might be affected by reactor construction and/or operation. Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974). Accordingly, we find that Mrs. Anderson, as

well as certain other petitioners,[6/] have established an interest which may be affected by the proceeding.

1. Mrs. Anderson contends that there has been no estimate made of the cost of permanent, high-level waste disposal. The contention is inadmissible. It is not based upon new information unavailable prior to December 1975. Further, in Natural Resources Defense Council, Inc. v. NRC, 582 F2d 166 (1978), the Court of Appeals 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 or future applications for nuclear power reactor operating licenses until it makes a determination that high-level radioactive wastes can be permanently disposed of safely. This being so, costs of such ultimate disposal need not be considered.

2. Petitioner alleges that there has been no showing that there is no economically sound and environmentally agreeable alternative to the construction of the proposed plant. The contention is rejected. Contrary to § 2.714(b), it is vague and fails to set forth with reasonable specificity the basis for alleging that Applicant's and Staff's analyses of alternatives have been inadequate.

6/ The other petitioners whom we conclude have established standing on the same basis are: Patricia Day, Jean-Claude DeBremaecker, Madeline and Robert Framson, Steven Gilbert, Carro Hinderstein, Kathryn Hooker, Gregory J. Kainer, Lee Loe, D. Marrack, Dan M. McCaughan, Brenda A. McCorkle, Emanuel Baskir, F. H. Potthoff, III, John R. Shreffler, Ann Wharton, and Dr. Joe C. Yelderman.

3. While recognizing that the Supreme Court has upheld the constitutionality of the Price-Anderson Act in Duke Power Company v. Carolina Environmental Study Group, 98 S. Ct. 2620 (1978), Mrs. Anderson contends that this Board has the discretion to consider liability costs unlimited by the provisions in said statute. The contention is inadmissible, because, apart from the fact that a licensing proceeding is plainly not the proper forum for an attack upon statutory policy (Florida Power and Light Company (Turkey Point Units 3 and 4), 4 AEC 787 (1972)), we are bound by the Supreme Court's decision.

4. Mrs. Anderson contends that technology for decommissioning the plant has not been demonstrated by the Applicant. This contention is not based upon new evidence or information unavailable prior to December 1975. Moreover, decommissioning criteria are now the subject of rulemaking - "Decommissioning Criteria for Nuclear Facilities -- Advance Notice of Proposed Rulemaking". 43 Fed. Reg. 10,370 (1978). Licensing Boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission. Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 85 (1974). Accordingly, the contention is rejected.

While Mrs. Anderson is not admitted as a party, she may, if she so desires, make a limited appearance statement pursuant to 10 C.F.R. § 2.715(a).

PATRICIA L. DAY

A. Interest

See footnote 6, supra

B. Contentions

1. As her sole contention, Petitioner alleges in substance that the conclusion in the FES that geothermal energy is not a feasible alternative to nuclear power in Applicant's service area is erroneous because the Department of Energy is engaged in a test geothermal energy production project only forty miles from the proposed site. The contention is inadmissible since it does not present an issue in controversy. Ms. Day has misunderstood the Staff's conclusion in that the Staff had not categorically concluded that geothermal energy is not a feasible alternative to nuclear power. The Final Supplement to the FES at p. S.9-6 reflects that the Staff concluded that geothermal energy is not an available source of energy for the proposed 1200 MWe of base-load generating capacity in Applicant's service area. The new fact that DOE is currently proceeding with a geothermal test project does not conflict with the Staff's conclusion as to the present non-availability of geothermal energy as an alternative energy source.

While Ms. Day is not admitted as a party, she may, is she so desires, make a limited appearance statement pursuant to 10 C.F.R. § 2.715(a).

JEAN-CLAUDE DE BREMAECKER

A. Interest

See footnote 6, supra

B. Contentions

1. The Petitioner contends that this Board may, in its discretion, consider the question of the permanent disposal of high-level radioactive wastes since it is not precluded from so doing by the Court of Appeals in Natural Resources Defense Council, Inc. v. NRC, 582 F2d 166 (1978). The contention is rejected. As reflected in our discussion of Mrs. Anderson's Contention 1, supra, both the Commission's determination and the Court of Appeals' decision preclude our consideration of this matter.

While Mr. DeBremaecker is not admitted as a party, he may, if he so desires, make a limited appearance statement pursuant to 10 C..F.R § 2.715(a).

MADELINE B. FRAMSON - ROBERT S. FRAMSON[7/]

A. Interest

See footnote 6, supra

B. Contentions

1. Petitioners assert that Applicant should be required to perform demographic and environmental studies over the life of the plant

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7/ The Petitioners' petitions for leave to intervene and their contentions were identical.

(thirty years) and then ad infinitum in order to determine the environmental impact upon the burgeoning population in the area around the proposed site. However, Applicant has made demographic estimates through the year 2020 as reported in the Final Supplement to the FES at p. S.2-1 and in Tables S.2.1 and S.2.2. The associated environmental effects have also been evaluated in the FES. Petitioners have not shown wherein these estimates and evaluations are inadequate and thus, contrary to 10 C.F.R. § 2.714(b), have failed to set forth bases for this contention with reasonable specificity. To the extent that petitioners allege that studies have not been made upon the question of decommissioning, see our discussion, supra, of Mrs. Anderson's Contention 4. This contention is rejected.

2. and 3. Petitioners apparently assert that no analyses have been made of either the environmental effects or of the health and safety aspects involved in the transportation of fuel rods and of waste to and from the reactor. This is erroneous. Section 51.20(g)(1) 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 C.F.R. 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 C.F.R. § 2.758. The contentions are inadmissible.

4. Petitioners contend that, since high-level radioactive wastes will be stored for at least ten years at the site and perhaps in perpetuity because a permanent waste disposal method has not yet been specified, the license should be denied until studies are made of the radioactive emissions from the steady increments of radioactive waste stored on site. The contention is rejected. 10 C.F.R. Part 50, Appendix I, contains numerical limitations on the annual radioactive dose levels from the operation of a nuclear plant, inclusive of doses from spent fuel. Table S.5.14 in the Final Supplement to the FES sets forth Appendix I design objectives and the calculated doses for the instant plant. Thus, to the extent the Petitioners may be alleging that the dose levels of Appendix I are too high, such allegation is an impermissible challenge to the regulations (§ 2.758), and, to the extent that they may be alleging that Applicant will not meet Appendix I limits, no basis has been given. Further, we note that the Appeal Board has held that, in the evaluation of a proposed expansion of the capacity of a spent fuel pool, neither the Staff nor the Licensing Board need concern itself with the matter of the ultimate disposal of the spent fuel; i.e., with the possibility that the pool will become an indefinite or permanent repository for its contents. Northern States Power Company, et al (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41 (1978). Obviously this decision obtains herein.

5. Petitioners allege that "weapons grade" plutonium will be stored at the proposed plant site, in turn creating a security risk from the threat of theft, violence, and nuclear terrorism. If we accept (in lieu of Petitioners' term "weapons grade" plutonium) the fact that spent fuel stored at the facility contains plutonium that can be converted into material possibly useful in the fabrication of a weapon, then an objectionable premise can be eliminated. We then are left quite simply with a barren allegation that security measures for the ACNGS will be inadequate. The contention is rejected. We are unaware of any applicable regulation, and none has been cited by the petitioners, that requires an Applicant for a construction permit to submit at that stage preliminary security plans which would consider and/or specify the exact measures to be taken for safeguarding against the theft of fissile material from the proposed plant.

6. Petitioners contend in two contentions numbered 6, that the dose levels permitted by NRC regulations are too high and that this is especially so when it is recognized that an individual's susceptibility is increased by factors such as poor health, disease, pregnancy, and genetic defects. This contention is rejected as being an impermissible challenge to NRC regulations (10 C.F.R. Parts 20, and 50, Appendix I) which provide limits for radioactive dose levels. Such a challenge is precluded by § 2.758, absent a showing of special circumstances pursuant to § 2.758(b). See also our ruling rejecting Doherty Contentions 1 and 2,

supra.

7. Petitioners allege that the construction of the plant will result in decreased civil liberties in that extensive safeguards will be required to protect against sabotage and terrorism. The contention is rejected. We do not have the authority to consider such a contention, and Petitioners do not cite any statute or regulation so empowering us. Further, in the absence of any allegation that the security requirements of 10 C.F.R. Part 73 will not be met, this contention can only be construed as an impermissible challenge to the adequacy of Part 73. Finally, the contention is not based upon any design change in the plant or upon evidence or information not available prior to December, 1975.

8. Petitioners assert that the safety analysis has failed to consider the danger from insulator failures in containment electrical penetrations. We reject this contention as being too vague and lacking in specificity in seeking to connect an alleged failure of electrical penetrations at the Millstone plant with those planned to be utilized in the containment at ACNGS.

9. Petitioners allege that the FES and the SER are defective in relying upon accident risk assessments in WASH-1400. The contention is rejected for the reasons stated in our discussion of PIRG additional Contention 5, supra.

10. Petitioners allege that the present plan for decommissioning the plant is inadequate because it does not insure that Applicant will be able either to properly decommission or to pay for such work. The contention is rejected for the same reasons that we rejected Mrs. Anderson's Contention 4, supra, with the additional observation that Petitioners have failed to provide a basis for challenging Applicant's financial ability to undertake the decommissioning activity.

11. Petitioners assert that the proposed plant should not be constructed because it will destroy over 5000 acres of rich, needed, food-producing farmland. The contention is rejected since it is not based upon new information or evidence unavailable prior to December, 1975 and, indeed, less land will be used as a result of the reduction of two units to one.

While the Petitioners are not admitted as parties, they may make limited appearance statements pursuant to 10 C.F.R. § 2.715(a).

STEVEN GILBERT

A. Interest

See footnote 6, supra

B. Contentions

1. Petitioner asserts that the exclusion area and the low population zone are too small to allow safe evacuation since two studies indicate that six named towns will have more than 25,000 inhabitants each

by the end of the operating life of the plant. He further asserts that two recent Civil Defense studies show that Galveston and Houston could not be evacuated within the time necessary to prevent major loss of life in the event of an accident at the plant.[8/] The contention is rejected for the same reasons we rejected PIRG Additional Contention 3, supra.

While the Petitioner is not admitted as a party, he may make a limited appearance statement pursuant to 10 C.F.R. § 2.715(a).

CARRO HINDERSTEIN

A. Interest

See footnote 6, supra

B. Contentions

1. Petitioner alleges that the proceedings should be suspended because the EPA has given a rating of ER-2 to the Final Supplement to the FES rather than an ER-1 rating, which means there is insufficient information. The contention is rejected since it is based upon a mistake - the EPA's comment and rating were directed only to the Draft Supplement to the FES (See p. S.A-5). Further, in its responses to EPA comment that the DES did not contain a detailed description of the gaseous waste system, the Staff brought to EPA's attention the fact that

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8/ Mr. Gilbert did not attend the Special Prehearing Conference on November 17 and 18, 1978, and thus, unlike the other attending petitioners, did not avail himself of the opportunity to orally respond to the Staff's and/or Applicant's objections and to identify the sources of new evidence and information.

detailed information regarding the radwaste systems was not necessary since the Safety Evaluation Report contained a detailed evaluation and that the Council on Environmental Quality had approved the c..etion of detailed descriptions of radwaste systems from future issuances of Environmental Statements. (P. 11-5).

2. Petitioner asserts that the construction permit should not be granted until a high-level radioactive waste disposal plan for the plant is presented. The contention is rejected for the reasons stated in our discussion of Anderson Contention 1 and DeBremaecker Contention 1, supra.

3. Petitioner alleges that the FES does not discuss, for example, the environmental impact of dredging the Brazos River in order to bring the reactor vessel to the site by a barge. The contention is rejected for the reasons set forth in our discussion of PIRG Additional Contention 1, supra.

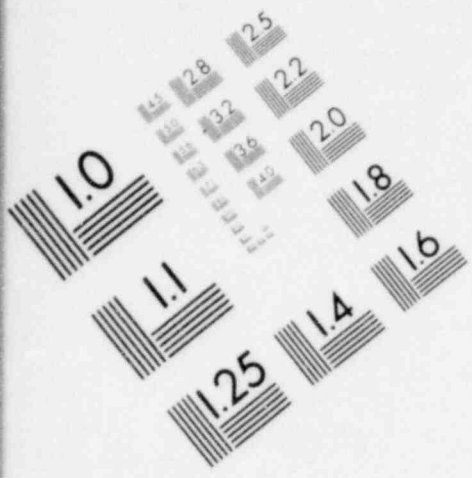
4. Petitioner alleges that cold shoc.. to fish in the cooling lake was not adequately addressed in the Final Supplement to the FES since the cold shock would be increased by the change in design to one unit, which will not be operating for as much of the time as two units. The Staff concurred that this problem was of more concern with one unit (p. S.5-13), but concluded that "Fish Mortality due to cold shock should be negligible since it would only occur when severe winter cold weather is coupled with plant shutdown". (p. S.5-14). Petitioner does not

challenge Staff's analyses leading to this conclusion. Accordingly, her contention lacks basis and is rejected.

5. Petitioner alleges that, in light of the increasing demands upon fresh water, the possibility of an alternative site on the Texas Coast to utilize sea water as a coolant should be explored. During the Special Prehearing Conference, Ms. Hinderstein cited as new evidence or new information a "Summary Report - Area-wide Waste Treatment Management Plan for the Greater Houston Area - December, 1977 - Houston-Galveston Area Council" and a "Point Source Analysis, Inventory - Water Demands and Problem Area Identification - July, 1977 - Houston-Galveston Area Council". (Tr. 522) The Staff thereupon withdrew its earlier opposition and supported the admission of this contention (Tr. 524), but Applicant maintained its objection. Without passing upon the merits of the contention, we admit the contention as an issue in controversy since there has been a showing of new evidence or information previously unavailable.

6. Petitioner alleges that a wet cooling tower is environmentally superior to the cooling lake because less fresh water would be used and because less ground surface would be used. The contention is rejected for the same reason we rejected PIRG Contention 3, supra.

7. Petitioner asserts that the Final Supplement to the FES does not take inflation into account and thus unrealistically projects



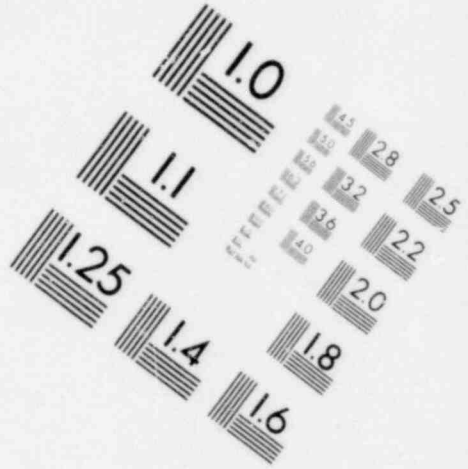
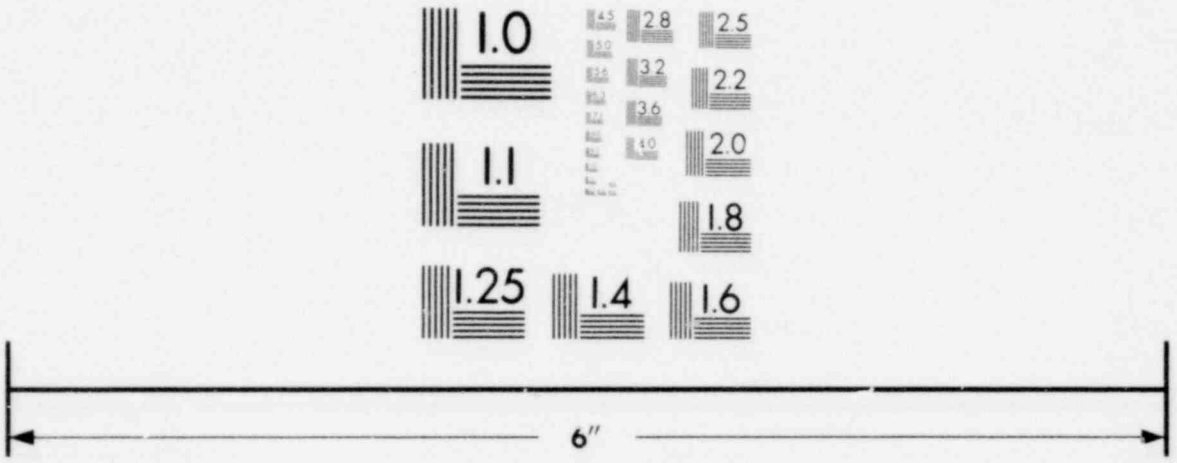
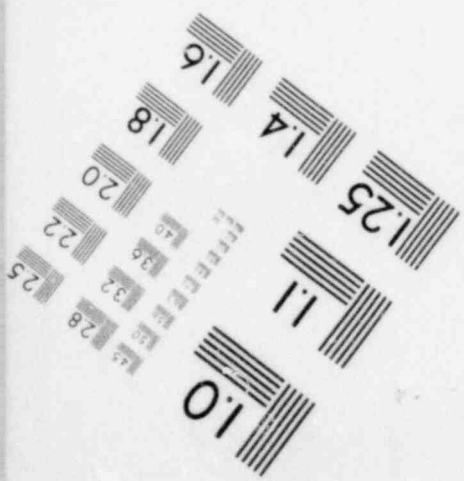
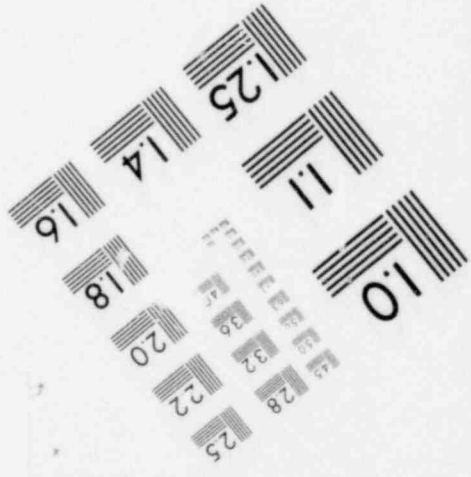
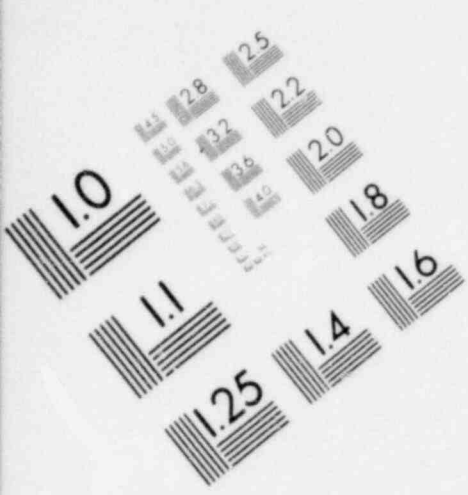


IMAGE EVALUATION TEST TARGET (MT-3)









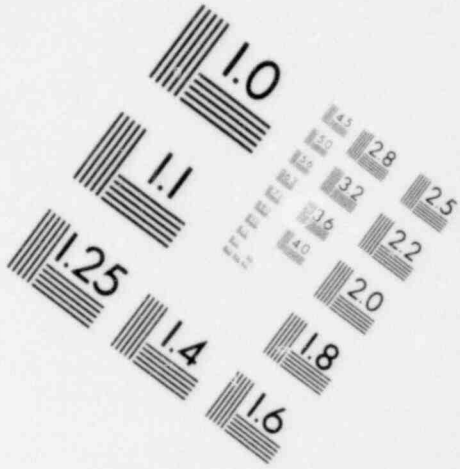
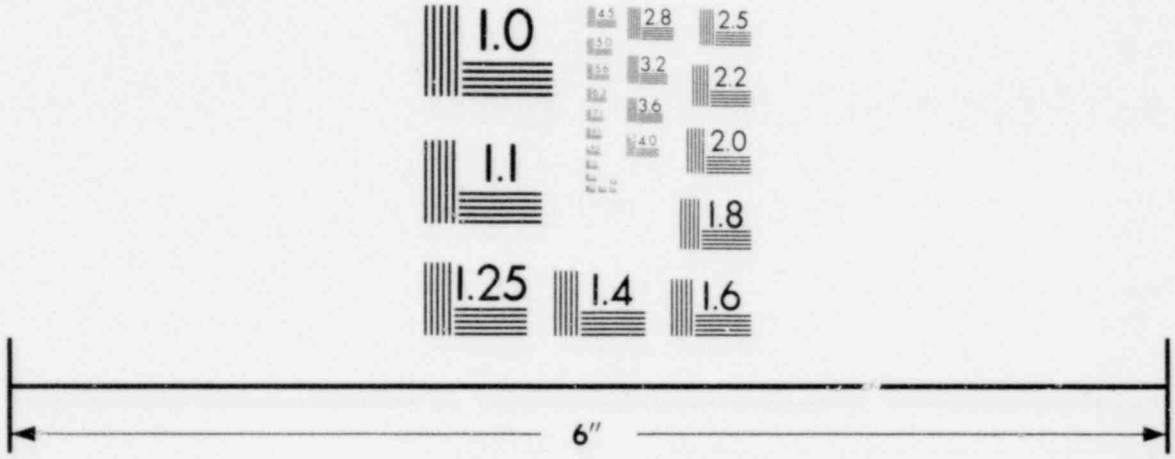
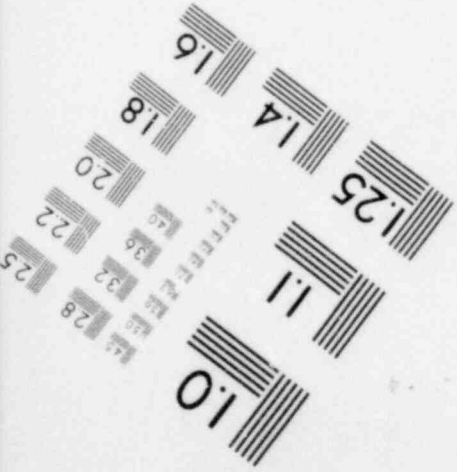
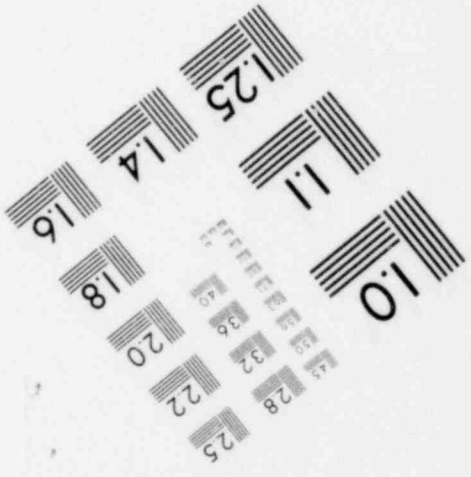


IMAGE EVALUATION TEST TARGET (MT-3)







the costs of decommissioning, of managing on-site wastes, of uranium, and construction. However, in Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 162 (1978) the Appeal Board held that, if there are no preferable environmental alternatives, cost-benefit balancing does not take place. The Petitioner does not allege the environmental superiority of any specific alternative. In light of this vacuum, there is no basis for the contention and it is rejected.

8. Petitioner contends that the FES should provide for two safeguards for the Attwater's Prairie Chicken nesting grounds - namely, that the transmission lines should not be constructed during the nesting period, and that the use of herbicides and pesticides be banned in the vicinity of the nesting grounds. The contention is rejected as being without bases - pp. S.4-14 and 4-15 of the FES reflect that Applicant has committed itself to comply with these safeguarding measures.

9. Petitioner contends that monitoring stations to measure chemical air pollution and air radioactivity levels should be planned at the perimeter of the site and about five miles away to ensure safe operation. Since there is no showing that this contention is based upon new evidence or information unavailable prior to December 1975, the contention is rejected.

10. Petitioner alleges that the Final Supplement to the FES lacks a soil survey and adequate information on the aquifer and water table, which are necessary in order to evaluate the possibility of

radioactive contamination of the cooling lake water and ground water. We reject this contention since the Petitioner fails to particularize wherein the information in the FES and the Final Supplement to the FES on soil and characteristics of the aquifer and of the water table are inadequate. Moreover, the Board has already considered these matters leading to its findings 104 and 105 in our Partial Initial Decision.

11. Petitioner asserts that there is newly discovered evidence that no dose of radiation is low enough to reduce the risk of cancer malignancy to zero, and requests that the maximum permissible radiation exposure be reduced to correspond to this newly discovered evidence. The contention is rejected as being an impermissible challenge to NRC regulations. See our ruling upon Framsons' Contention 6, supra.

Ms. Carro Hinderstein is admitted as a party and her Contention 5 is admitted as an issue in controversy.

KATHRYN HOOKER

A. Interest

See footnote 6, supra

B. Contentions

1. In substance, petitioner alleges that (a) the normal low level of radiation from the proposed plant would contribute to cancer and genetic effects and (b) in any event Applicant could not meet the

man-rem requirements of 10 C.F.R. Parts 20 and 50 (Appendix I) because of the unexpected growth of population in the area southwest of Houston. Subcontention (a) is an impermissible challenge to NRC regulations and is rejected (See our rulings on Doherty Contentions 1 and 2, Framsons' Contention 6, and Hinderstein Contention 11, supra). Subcontention (b) is rejected because the ability of Applicant to meet the above-mentioned dose requirements is independent of whether (much less how many) people are in the vicinity of the site. To be sure, Part 100 establishes criteria with respect to low population zone radius and the distance to the nearest population center. However, Petitioner fails to provide a basis for invalidating the ACNGS site selection - per these criteria - in the face of an alleged unexpectedly large population growth.

On November 21, 1978, Ms. Hooker filed a Request For Proposed Rules Waiver and Affidavit, moving this Board to waive the applicability to this proceeding of 10 C.F.R. Parts 20 and Appendix I to Part 50 for the sole purpose of admitting into litigation an allegation of synergistic effects of Houston air pollution and ACNGS gaseous radiological effluents. Such a waiver can only be granted if the requirements of 10 C.F.R. § 2.758 are met. They are not, for reasons cited above relative to Petitioner J. F. Doherty's similar request for waiver (see Doherty Contentions 1 and 2, supra). We deny the motion for waiver.

2. In substance Petitioner contends that the emergency core cooling system will not be virtually failure proof. The contention is rejected because, first, the Atomic Energy Act and NRC regulations require reasonable, not absolute, assurance that a nuclear plant will operate safely. Second, the contention is an impermissible challenge to § 50.46, Appendix K, which sets forth acceptable criteria for the ECCS. Third, to the extent that it claims Applicant's design does not comply with § 50.46, the contention lacks specificity in failing to show wherein the design is not in compliance with the regulations. In the prehearing conference session of November 18, 1978, Petitioner was given until November 22, 1978 to respond to the oral objections of Applicant and Staff to her originally proposed contentions (Tr. 568). In her supplemental submission of November 21, 1978, Petitioner took this as an opportunity to expand the scope of her Contention 2 to include such additional matters as Class 9 accidents, adequacy of the Mark III containment design, NSSS vendor's conflict of interest implicit in testing his own components, quality assurance, and emergency planning. These clearly constitute an impermissible attempt to broaden the scope of this contention, an attempt that transgresses the permission to respond granted by the Board.

3. It is not clear whether Petitioner is alleging that there is no method of permanent high-level waste disposal or that the storage

of spent fuel at the site is unsafe. If the contention relates to the first matter, it is rejected for the reasons given in our ruling upon Anderson Contention 1, DeBremaecker Contention 1, and Framsons' Contention 4. If the contention relates to the second matter, the contention is also rejected. Doses to individuals from plant operation are calculated pursuant to 10 C.F.R. 50, Appendix I, and this analysis is discussed in Section S.5.4 of the Final Supplement to the FES. Moreover, accident calculations have been made for a spent fuel handling accident in Section S.7 of the Final Supplement to the FES. Petitioner does not specify or even allege any inadequacies or errors in those calculations and analyses, and does not allege that Applicant will not comply with the regulations. Thus, there is no basis for the contention.

4. Petitioner questions the possibility of an accident occurring in the transportation of waste material from the site. The contention is rejected for the reasons set forth in our discussion of Framsons' Contentions 2 and 3, supra. Further, while Petitioner points to new studies which show increases in population and in the construction of roads, she does not allege that Applicant cannot or will not comply with the regulations. She merely indicates that it will be more difficult for Applicant to provide safe transportation. Thus there is no basis given for this contention.

5. Petitioner alleges that the license should be denied since new studies upon the growth of population and roads now show that the

factors relied upon by the Board in its Partial Initial Decision upon site suitability are now inaccurate. No basis whatsoever is provided to show whether or in what manner these inaccuracies negate the qualifications of the proposed site to conform to the Commission's site selection criteria. We reject this contention as being vague and without basis.

While Ms. Hooker is not admitted as a party, she may make a limited appearance statement pursuant to 10 C.F.R. § 2.715(a).

GREGORY J. KAINER

A. Interest

See footnote 6, supra

B. Contentions

1. In substance Petitioner alleges that Applicant has not had any experience in the operation of a nuclear plant and thus the license should be denied. The contention is rejected. Prior nuclear experience is not a requirement for the issuance of a construction permit. Northern Indiana Public Service Company (Bailly Generating Station, Nuclear 1), LBP-74-19, 7 AEC 557, 567 (1974); Mississippi Power and Light Company and Middle South Energy, Inc. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-232, 8 AEC 635 (1974).

The balance of the Petitioner's submissions consists of a potpourri of barren, unsupported contentions - e.g., there are numerous

nuclear plant outages, there are risks of radiation exposure, the Mark III containment has never been used before, and there would be chlorine discharges into the cooling lake affecting the fish. He alludes to the Price-Anderson Act (see our ruling on Anderson Contention 3, supra) and to the lack of permanent waste disposal facilities (see our ruling on Anderson Contention 1, DeBremaecker Contention 1 and Framsons' Contentions 2 and 3, supra). Accordingly, these contentions are rejected.

While Mr. Kainer is not admitted as a party, he may, if he so desires, make a limited appearance statement pursuant to § 2.715(a).

LEE LOE

A. Interest

See footnote 6, supra

B. Contentions

1. Petitioner contends that recent information shows that low levels of radiation may be quite harmful. The contention is rejected as being an impermissible challenge to NRC regulations. See our ruling upon Framsons' Contention 6, supra.

2. Petitioner expresses a general concern over potential dangers of nuclear power in that workers must make no mistakes, equipment must not misfunction, and the profit motive must not prevail over health

and safety concerns. The contention is rejected because it is a barren one, lacking specific bases contrary to § 2.714(b).

3. Petitioner voices concern about the lack of permanent waste storage facilities. The contention is rejected. See our ruling upon Anderson Contention 1, DeBremaecker Contention 1, and Framsons' Contention 3, supra.

4. Petitioner contends that nuclear power is more costly than solar, wind and geothermal sources of power because of initial construction costs, of a failing supply of uranium and of waste disposal costs. The contention is inadmissible. Taken as a whole it is a personal objection to nuclear power as an energy option. In this light the Applicant objects on the basis that the Supreme Court has emphasized that the Congressional decision to "at least try nuclear energy" is not subject to reconsideration in adjudicatory proceedings. Vermont Nuclear Power Corporation v. Natural Resources Defense Council, 98 S. Ct. 1197, 1219 (1978). With respect to economic costs alone we reject the contention on the same bas's as our ruling on PIRG Contention 9, supra.

While Mr. Loe is not admitted as a party, he may make a limited appearance statement pursaunt to 10 C.F.R. § 2.715(a).

DAVID MARKE

In his submittal dated October 10, 1978, Petitioner requested that he be admitted as a party to this proceeding both as a matter of right and as a matter of discretion, and stated his intent to submit contentions at a later date. Petitioner did not attend the Special Prehearing Conference held on November 17 and 18, 1978, but submitted a Mailgram to the Board, the contents of which were read into the record (Tr. 678-679). Subsequently, the Board, by its Order of January 8, 1979, found good cause for granting Mr. Marke until January 19, 1979, to remedy his submission. Such has not been received.

Petitioner alleges that he represents a citizens group known as Austin Citizens for Economical Energy (ACEE), the interests of the members of said group he purports to represent. He fails to establish that ACEE exists as a duly or legally constituted citizen group; he fails to identify any member of the group (other than perhaps himself) whose interest might be affected; and he fails to establish that he is authorized by ACEE or any of its members to represent the group or said members. Hence, we are only able to consider, at most, that Mr. Marke is acting solely in his own behalf. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2) ALAB-413, 5 NRC 1418, 1421 (1977); Allied General Nuclear Services, et. al. (Barnwell Fuel Receiving and Storage Station) LBP-75-60, 2 NRC 687, 690 (1975).

His personal interest is too remote in that Petitioner resides in Austin, Texas, at a distance of approximately 200 miles from the proposed site, and outside the Applicant's service territory Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1150 (1977); Duquesne Light Company (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 244 n. 2 (1973). His allegations of personal interest are said to be related to considerations of economic penalties, radiological and restricted use impacts upon his water supply, the direct consequences of radiation releases from the proposed plant, and the impacts upon his business interests of nearby rail or highway accidents involving the shipment of radioactive materials. These are all vague, tenuous and unsupported considerations that do not constitute a showing of standing. Nor has Petitioner indicated his ability to contribute to the decisionmaking process, since he has not identified with particularity the issues upon which he is prepared to contribute, and the contribution he expects to make. Nuclear Engineering Company, Inc. (Sheffield Illinois Low-Level Radioactive Waste Disposal Site, ALAB-473, 7 NRC 737, 745 (1978). Mr. Marke has not met his burdens, and his requests for standing as a matter of right and for leave to intervene as a matter of discretion are denied.

While Mr. Marke is not admitted as a party, he may make a limited appearance statement pursuant to 10 C.F.R. § 2.715(a).

D. MARRACK

A. Standing

See footnote 6, supra

B. Contentions

1. Petitioner apparently alleges that site suitability matters resolved by our Partial Initial Decision should be reopened because of the EPA ER-2 rating. The contention is rejected. (See our ruling upon Hinderstein Contention 2, supra.)

2. Petitioner contends that neither the original FES nor the Final Supplement address the impact of the power lines (a) on the Barker Recreation Area, (b) on the human, wildlife and biological systems, and (c) on migratory wildfowl. The contention is rejected. In the first place Petitioner errs because the Applicant's plans to erect transmission lines on Route 3A alongside the Barker Recreation Area were cancelled as reported in § 3.9 of the Environmental Report and in S.3.4 of the Final Supplement to the FES. Second, contrary to § 2.714(b), the Petitioner does not particularize and show the basis for the allegation that the high voltage lines would cause a hazard to humans and to all wildlife,[9/] and contrary to Petitioner's assertion,

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9/ We note that Petitioner asserts that, since 1975, the American Electric Power Research Institute has initiated a study of the effects of high voltage transmission upon biological systems but has not completed its report. An unfinished report does not serve either to demonstrate that the allegation is based upon new evidence or information or to show a reasonably specific basis for the allegation.

§§ S.4.1.4 and S.5.1.2 of the Final Supplement to the FES do discuss the possible effects of transmission lines. Third, the allegation that the proposed transmission lines lie athwart a major waterfowl flyway could have been raised prior to December 1975, and the mere fact that the Texas Public Commission has purportedly ordered the South Texas Project since 1975 to reroute its power lines away from a migratory waterfowl roost does not serve to convert the allegation into becoming new evidence or information. Furthermore, the Applicant's Environmental Report has been amended in response to a question from the Staff (Amend. No. 0, 11/13/73, p. 5.6-2A) to provide a discussion of this specific point. The Applicant states:

> "There are many miles of transmission lines in the Houston Lighting and Power Company system, some of which have been in existence for many decades. Many of these lines cross water bodies several of which are used by migratory waterfowl. These lines are regularly inspected (for maintenance purposes) and no instances of significant bird losses have been reported."

Hence, this aspect of the proposed contention is rejected for lack of an adequate basis. However, since we do not find this result in the FES as supplemented, we shall seek a clarification from the Staff as to whether the FES can be deemed to be so modified.

3. Petitioner contends that there has been no analyses of the secondary impacts of the proposed project. The contention is rejected.

The alleged secondary impacts have not been particularized. Further, this subject was dealt with in our Partial Initial Decision, 2 NRC 776, 789-91 (1975), and there has been no specific new information presented which would cause us to question our findings.

4. Petitioner alleges that alternative sites and other means of providing energy have not been adequately addressed. The contention is rejected as being barren and conclusional, and is not based upon new information or evidence.

5. Petitioner contends that, since there are indications that additional units will be proposed for the site, a full-scale review of the ultimately developed project must be made. We agree with the Staff that, in the event another unit (or units) were to be proposed, environmental analyses would have to be performed by the Applicant and Staff. There is no basis for the contention and thus it is rejected.

6. Petitioner asserts that there are discrepancies and inconsistencies between the FES and its supplement. The contention, being vague and unparticularized, is rejected.

7. Petitioner asserts that, before this Board can issue a license, Applicant must obtain certain permits from the Corps of Engineers and from the Texas Department of Water Resources. The contention is rejected. Applicant is not required to have every permit in-hand before a construction permit is authorized. See Cleveland Electric Illuminating

Company, et. al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 748 (1977).

While Mr. Marrack is not admitted as a party, he may make a limited appearance statement pursuant to 10 C.F.R § 2.715(a).

DAN M. MC CAUGHAN

A. Interest

We deem that Petitioner has legal standing to intervene upon his own behalf (see footnote 6, supra), but that the Environmental Task Force does not have standing. Said alleged organization does not have standing to intervene since there is no showing that its members might be adversely affected by the granting of the construction permit. Moreover, there has been no identification of its individual members and no showing that the members have authorized the organization or Petitioner to act upon their behalf. Allied-General Nuclear Services, et. al. (Barnwell Fuel Receiving and Storage Station), LBP-75-60, 2 NRC 687 (1975), aff'd. ALAB-328, 3 NRC 420 (1976).

B. Contentions

Petitioner's submission listed twenty-one contentions. These contentions are rejected. Contrary to § 2.714(b) and our Corrected Notice of Intervention Procedures, all are conclusional, vague, unspecific, and do not indicate that they are based upon new evidence or information. For

example, Contention XV reads"This plant will add radiation to our environment. All radiation releawes affect living tissue. The risk of cancer not only affects exposed individuals, but also their future offspring." Contention XI reads "The safety standards for this industrial plant have been determined by Corporate Industry elite individuals. These standards should not be set by industry."

While Mr. McCaughan is not admitted as a party, he may, if he so desires, make a limited appearance statement pursuant to 10 C.F.R. § 2.715(a).

BRENDA A. MC CORKLE

A. Interest

See footnote 6, supra

B. Contentions

1. Petitioner contends that pollution in the area when combined with radiation emitted from the proposed facility would present health hazards. This contention is rejected for the reason set forth in our discussion of Framsons' Contention 6 and Hinderstein Contention 11, supra.

2. Petitioner contends that, because of reduction in size, the cooling lake is of questionable or little recreational value. This portion of the contention is admissible. With respect thereto, pursuant to § 2.715(a), Ms. McCorkle and Texas PIRG (with regard to its Contention 2) are consolidated as parties and they will designate a single representative for the presentation of evidence, cross-examination, briefs, proposed findings of fact, and

conclusions of law and argument. However, that part of the contention which alleges that radioactive emissions will adversely affect the fish in the lake is rejected for lack of a basis for associating permissible concentrations of radioisotopes with damage to the fish.

3. Petitioner contends that the cost of the plant will be excessive. The contention is rejected for the reasons stated in our discussion of Hinderstein Contention 7.

4. Petitioner contends that there must be an immediate solution of the radioactive waste disposal problem. The contention is rejected. See our discussion of Anderson Contention 1, DeBremaecker Contention 1, and Framsons' Contention 4, supra.

5. Petitioner alleges that a BWR should not be used since, first, it emits over twenty times more radiation than does a PWR of the same power output, and, second, since the ACNGS design of BWR contains many new design features that have not been tested. Respecting the first aspect of the contention, we can only infer that Petitioner challenges the ability of a BWR to meet the radiological release criteria of the Commission's regulations, contrary to the findings of the Staff (Final Supplement to the FES at S.5 and S.7). No basis whatsoever (new or old) for this challenge is provided. Furthermore, the observation that a BWR releases more radiation than a PWR is of minimal significance

where, as here, the BWR release analysis places it well within Commission regulations.

The second aspect of this contention relating to untested design features alludes to new (post 1975) information about BWR concerns. However, Petitioner fails to provide a basis to suggest that any of these concerns relates to the proposed plant or, more importantly, that any of these concerns - if applicable - are being ignored by Applicant and Staff.

We must reject this contention in its entirety.

6. Petitioner alleges that the plant, in order to meet the "as low as practical" (now replaced by "as low as reasonably achievable") requirement of 10 C.F.R. Part 50 must reinstate the use of a 100 meter gaseous effluent release stack and employ additional charcoal absorbers and other air pollution abatement equipment in order that gaseous radioactive releases to the air do not exceed those from a PWR. This contention is fatally deficient in the following respects: first, it fails to recognize the language of Appendix I, "Design objectives and limiting conditions for operation conforming to the guidelines of this Appendix shall be deemed a conclusive showing of the "as low as reasonably achievable" requirements . . .". Second, it further fails either to take cognizance of S.5 of the Final Supplement to the FES and more particularly of Table S.5.14 wherein the ACNGS (as currently designed and configured)

is shown to comply with Appendix I, or to provide any basis for alleging that this showing is inadequate.

These considerations, in turn, render BWR v. PWR comparisons immaterial in this context. The contention is rejected.

7. Petitioner addresses the importance of a loose parts monitoring system (LPMS) - not in dispute - and alleges that the LPMS proposed for the plant is not "sufficiently sensitive" to prevent coolant blockage and subsequent core meltdown. No basis, new or old, is offered to support this allegation; nor is there a clue given as to what constitutes sufficient sensitivity, beyond the need to prevent flow blockage. The question of whether any amount of flow blockage might be detected in time to permit safe shutdown or to prevent a fatal malfunction of the ECCS is ignored. Hence the contention is much too vague and lacking in specificity to be admitted. We note, however, that a generic consideration of LPM systems has been designated (item B-60) in the NRC's January 1978 Report to Congress - "NRC Program for the Resolution of Generic Issues Related to Nuclear Power Plants", NUREG-0410. We expect that Staff will advise the Board during subsequent hearings whether a further discussion of this subject is relevant to this phase of the proceeding.

8. Petitioner contends that Applicant does not have sufficient control over the exclusion area because it has no control over the owners of oil and gas leases in that area. The contention is rejected because

it is not based upon new evidence or information unavailable prior to December 1975. As early as November 1974, in the SER at page 2-36, the Staff alluded to the potential for the extraction of minerals within the exclusion area, and as late as June 1975, in Supplement 1 to the SER at page 2-2, the Staff stated that Applicant had committed itself to either the outright purchase of mineral interests or to exercise its power of eminent domain to secure the required control.

9. Petitioner alleges that a plan has not been developed to protect plant operators from the danger of exposure to poisonous gases such as chlorine. No attempt was made to show that this was based on new evidence or information, and accordingly the contention is rejected.

10. Petitioner asserts that the plant's containment concrete shield should be built to withstand the impact of a 747 airplane because recent routings have caused more planes to fly near the reactor site. This portion of the contention is admissible and with respect thereto, pursuant to § 2.715(a), Mrs. McCorkle and Texas PIRG (with regard to its Contention 6) are consolidated as parties and shall designate a single representative. To the extent the balance of this contention relates to intentional airplane crashes, it is rejected for the reasons set forth in our discussion of PIRG Contention 6.

11. Petitioner alleges that insufficient consideration has been given to the fact that the plant will sit on the "lip of the subsidence bowl" since pumping of ground water by the plant, as well as

by nearby industries and residences, will cause a faulting which could crack the containment. The contention is rejected because there is no particularization in support of the allegation that, in light of a recent demographic report for Houston, this matter has been insufficiently considered. In the SER at page 2-36 and in Supplement 1 thereto at pages 2-23 to 2-50, the Staff thoroughly analyzed the matter of subsidence and its safety implications. Further, in findings 113-121 of its Partial Initial Decision, 2 NRC 776 (1975), the Board discussed this matter 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 Applicant's monitoring program could detect subsidence long before such subsidence presented a safety hazard.

12. Petitioner contends that the drywell, containment and shield must be tested at the estimated maximum pressures expected to be generated during a core melt accident. The contention is rejected because it is not based either upon new evidence or information, or upon changes in the proposed plans. More importantly, there is ample precedent to the effect that the probability of a Class 9 accident is so remote as to be incredible and need not be considered absent a showing - not here made - that special circumstances make a Class 9 accident more probable here than elsewhere. Duke Power Company (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 416-17 (1976).

13. Petitioner alleges that the new fuel arrangement is not safe because the storage of fission gases in each fuel rod will cause the emission of radiation during a core melt accident. This contention is rejected for the same reasons that Contention 12 was rejected.

14. Petitioner asserts that the fuel rods are not safe because of clad failures and off-gas activity caused by hydriding and the effects of fuel densification. The contention is rejected. It is not based on new evidence or a change in plans, and Petitioner concedes this is so (Tr. 611).

15. Petitioner asserts that (1) the reactor coolant pressure boundary does not have sufficient safety protection after years of operation, (2) that even if safe when installed, stresses and strains and corrosion caused by operation will cause pipes to crack, (3) that safety relief valves will not provide enough protection once a crack develops, and that no method exists to detect microcracks in sufficient time to prevent a pipe break. In documentation submitted subsequent to, and consistent with the last prehearing conference, Petitioner cites the existence of an article dealing with "broken pipes" in the Duane Arnold plant without developing any basis for believing or contending that said event is relevant in any way to the proposed plant. Hence, albeit new information, the Duane Arnold citation by Petitioner does not support this contention. More significantly, Petitioner fails to provide a basis for questioning the ability of the emergency core

cooling system to serve its purpose of adequately mitigating the consequences of any pipe break that might otherwise endanger the health and safety of the public, should numerous other accident mitigating measures fail. This contention is rejected for lack of adequate basis and specificity.

16. Petitioner asserts that the Residual Heat Removal System is inadequate in that, contrary to Criterion 34, it is not single failure proof. At page 5-23 of the SER, issued in November 1974, Staff had stated that "The RHR is not single failure proof and, therefore, violates the intent of Criterion 34 of the AEC General Design Criteria". Staff advises that this concern has been resolved and that the Applicant's acceptable resolution of this item will be discussed in the forthcoming Supplement to the SER. The contention is rejected because obviously it is in error and is not based upon new information or evidence.

17. Petitioner alleges that the containment as designed will allow excessive leakage to bypass the filtration system, that the filter absorber may start a fire by autoignition, and that there is no water spray to prevent autoignition. The contention is rejected since it is not based upon information or evidence unavailable prior to December 1975, and is not based upon a change in design.

Ms. McCorkle is admitted as a party; certain of her contentions as noted above are admitted as issues in controversy, and are to be consolidated with the above-indicated contentions of Texas PIRG.

CHARLES MICHULKA

In a submission docketed on December 11, 1978, Mr. Michulka withdrew his petition of intervention. We herewith allow the withdrawal.

NATIONAL LAWYERS GUILD
(Houston Chapter)

A. Interest

In its Petition For Leave To Intervene dated October 11, 1978, as supplemented on November 17, 1978, Petitioner avers that it is the duly chartered local chapter of the National Lawyers Guild, a voluntary association of over 5,000 lawyers, law students, legal workers and jailhouse lawyers founded February 22, 1937, in Washington, D. C. It asserts that it has more than fifty members residing in close proximity to the proposed plant. In support of its interest, Petitioner states that some of its members (a) use the air, water, food, products and natural resources in proximity to the proposed plant, (b) are asthmatics, who will be subjected to a higher risk of cancer induced by airborne radioactivity released from the plant, (c) are consumers of electricity generated by Applicant and thus can challenge Applicant's statements relating to the need for and the safety of nuclear power which violate the Federal Consumers Protection Act and the Texas Deceptive Trade Practices - Consumer Protection, (d) have and will continue to be subjected

to illegal and unconstitutional surveillance, eavesdropping, harrasment, intimidation, interference with contractual relations and defamation by federal, state, local police agents, agents in the employ of private electrical utilities, and by the NRC, for the illegal purpose of depriving members of the anti-nuclear power movement of their democratic rights to legal representation in organizing mass public opposition to proposed nuclear power projects.

After reading Petitioner's submissions and Applicant's and Staff's opposing responses, and after reviewing the Special Prehearing Conference transcript at pages 619-630, we conclude that Petitioner has failed to establish standing. Neither the names nor the addresses are given of the members who purportedly reside in close proximity to the proposed plant, and Petitioner's counsel stated at the special prehearing conference (Tr. 619) that Petitioner did not intend to provide this information. Petitioner refuses to provide this information on the ground that to do so would be to subject its members to the surveillance, intelligence gathering and security activities of the NRC, of Applicant and of the Texas Department of Safety, which Petitioner seeks to challenge in the instant proceeding. Absent this information, we are unable to determine whether, pursuant to 10 C.F.R. § 2.714, the Petitioner represents any person at all whose interest may be affected by the instant proceeding. Applying the teachings in Sierra Club v. Morton, 405 U.S. 727 (1972), we are compelled to conclude that there is a similar lack of standing here since Petitioner appears to

seek vindication of its own value preference rather than specifically allege facts showing that it actually represents named members who reside at certain distances from the proposed plant and who claim they will be adversely affected by the granting of the construction permit.

However, the Commission has directed that, in determining in a particular case whether or not to permit intervention by petitioners who do not meet the tests for intervention as a matter of right, adjudicatory boards should exercise their discretion based on assessment of all the facts and circumstances of the particular case. Portland General Electric Company, et. al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976). Accordingly, we proceed to consider the factors set forth in 10 C.F.R. 2.714(a) and (b):

(a) Weighing in favor of allowing intervention -

(1) The extent to which the Petitioner's participation may reasonably be expected to assist in developing a sound record.

(2) The nature and extent of the Petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the Petitioner's interest.

(b) Weighing against allowing intervention -

(4) The availability of other means whereby Petitioner's interest will be protected.

(5) The extent to which the Petitioner's interest will be represented by existing parties.

(6) The extent to which Petitioner's participation will inappropriately broaden or delay the proceeding.

In light of Petitioner's refusal to identify its members and to show where they reside, we are unable to weigh factors (a)(2) and (3) in Petitioner's favor. Petitioner urges that factor (a)(1) favors the allowing of its intervention in that its members are experienced in analyzing the political, legal and social dangers presented by the security network which accompanies the installation of a nuclear power facility and thus could develop a sound record documenting the adverse affects of nuclear power security apparatus and systems associated with the Allens Creek Plant on the public health and safety of itself, its members and the general public. (Petitioner's Supplement, p. 7). As with the American Civil Liberties Union of South Carolina, which was the Petitioner in Allied-General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976), the instant Petitioner's real interest is to use this proceeding as a vehicle for determining whether there may indeed be threats posed to civil liberties by issuance of the proposed license. Obviously Petitioner is in the wrong forum - civil liberties do not come within the "zone of interests" to be protected or regulated by the Atomic

Energy Act of 1954 and the National Environmental Policy Act, which are enforced in our licensing proceedings. See Long Island Lighting Company (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 638 (1975). Thus, there are no factors weighing in favor of allowing intervention. Factors (b)(4)(5) do not weigh against intervention. However, Factor (b)(6) weighs against allowing intervention since the Petitioner states that its participation will benefit public health and safety by delaying the licensing of the Allens Creek Plant (Petitioner's Supplement, p. 8). Clearly, Petitioner's participation would not produce a valuable contribution to our decisionmaking process. See Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 (1977). Limited appearance statements may be made.

EMANUEL BASKIR

A. Interest

See footnote 6, supra

B. Contentions[10/]

1. Petitioner contends that, even though radioactive emissions are diluted and vented through stacks[11/] and thus are below acceptable

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10/ We considered Mr. Baskir's list of contentions dated November 1, 1978, as well as his untimely supplementation dated November 28, 1978. (Tr. 667).

11/ The Petitioner errs. The 328 foot stack has been deleted. Supplement to FES, § S.3.

upper bounds, these emissions may not be appropriate because of local atmospheric temperature inversions and sudden tropical rainstroms. The contention is rejected. Clearly this contention is not based upon new evidence or information unavailable prior to December 1975, and allegations that various operating nuclear plants have exceeded regulatory emission standards do not serve to convert these incidents into being new information or evidence absent some showing of a nexus with the proposed design of the plant.

2. and 3. Petitioner contends that, in the absence of any permanent waste storage facility, the spent fuel pool at the site will be inadequate for the storage of wastes over the operating life of the plant, and that, in the absence of a permanent waste storage facility, the license should not be granted. These contentions are rejected for the same reasons we rejected Anderson Contention 1, DeBremaecker Contention 1 and Framsons' Contention 4.

4. Petitioner alleges that contingency plans should be reviewed by the Staff for the containment of radioactive contamination in the event of an accident during the transportation of nuclear fuel and of waste to and from the reactor. The contention is rejected for the reasons set forth in our discussion of Framsons' Contentions 2 and 3, and Hooker Contention 4.

5. Petitioner alleges that Applicant has not shown that it has a program for the training of operating personnel and for the monitoring

of that program. The contention is rejected as being premature. See our ruling, in pertinent part, on PIRG Contention 8, and our ruling upon Kainer Contention 1.

6. Petitioner contends that the Applicant's analyses of earthquake potentials that could compromise the integrity of the proposed plant's structures (e.g. reactor building and spent fuel storage facility) should be reexamined; that improvements in geophysical technology in the last three years warrant reanalysis using the improved techniques. We reject this contention. In our Partial Initial Decision, findings 106-112, we extensively considered the geologic and seismic features of the site and its environs and concluded that "the linears crossing the site are not related to subsurface faults or other geological anomalies nor to topographical features which imply a hazard of ground failures at the site or otherwise affects its suitability or safety". Petitioner fails to particularize how any new evidence or information derived from the use of these improved techniques might invalidate the above conclusion. Hence the allegation is completely speculative and without basis.

7. Petitioner asserts that decommissioning should be considered, that a schedule should be furnished, and that Applicant should furnish a performance bond. The contention is rejected for the reasons stated in rejecting Anderson Contention 4. (See also Framsons' Contention 10

which was rejected).

While Mr. Baskir is not admitted as a party, he may, if he so desires, make a limited appearance statement pursuant to § 2.715(a).

F. H. POTTHOFF, III

A. Interest

See footnote 6, supra

B. Contentions

1. Petitioner alleges that tornado generated missiles might shatter the reactor building walls. The contention is rejected since it is not based upon new evidence or information not available prior to December 1975. Further, Petitioner does not question the adequacy of the Staff's tornado missile spectrum presented in Table 3-1 of the SER. Mr. Potthoff only vaguely expresses a concern that "sometimes people build plants that aren't within the specifications and somehow get by".

2. Petitioner asserts that the increased use of well water by householders and of ground water by industry will cause subsidences which could result in cracking of the reactor building. The contention is rejected. See our ruling upon McCorkle Contention 11, and our Partial Initial Decision findings 119, 120, and 121. (2 NRC at pp. 808-809).

3. Petitioner alleges that a 1978 West Texas earthquake of magnitude 2.3 (Richter) provides the basis for contesting Applicant's seismic design for the ACNGS. We cannot agree. The Board, in its Partial Initial Decision, findings 125-130, 2 NRC at pps. 810-811, concluded from its review of the geologic and seismic evidence that an event of magnitude 4.8 (typically MMVI) with an associated safe shutdown earthquake ground acceleration of 0.1g is "a conservative representation of the maximum earthquake in the Gulf Coast Tectonic province . . .". Thus, were we to assume that (at worst) the 1978 event cited by the Petitioner had occurred or can occur at the proposed site, the result would lie well within the design capability of the ACNGS facility for achieving and maintaining a safe shutdown. The contention is rejected.

4. (During the Special Prehearing Conference on November 18, 1978, at Tr. 641, Petitioner withdrew this contention relating to flood hazards. Thereafter, on or about November 20, 1978, Mr. Potthoff filed a submission which in effect was a motion for leave to file out-of-time a new contention. Applicant opposed the granting of the motion as well as the admissibility of the proposed contention. The Staff opposed the admissibility of the contention. We grant the motion since good cause was shown - namely, that a State constitutional amendment had recently occurred. We proceed to consider new Contention 4.)

Petitioner asserts that on November 7, 1978, the citizens of Texas approved a constitutional amendment (Amendment 4) permitting the Texas Legislature to exempt from State taxes solar and wind installations as energy sources. Petitioner contends that as a result of this amendment, solar and wind technologies could become economically feasible and could become alternatives by the time ACNGS comes on line in 1985. However, the constitutional amendment merely provides that the legislature may exempt solar or wind-powered energy devices from taxation. The contention is rejected because it is grounded on pure speculation that the Texas legislature will in fact enact such exemptive legislation and that the aforementioned devices would be available as adequate alternatives by 1985.

While Mr. Potthoff is not admitted as a party, he may make a limited appearance statement pursuant to 10 C.F.R. § 2.715(a).

JOHN R. SHREFFLER

A. Interest

See footnote 6, supra

B. Contentions

1. Petitioner contends that the use of a cooling tower in lieu of the cooling lake is preferable because the utilization of the latter would result in an evaporation loss of 40,000 acre feet of water which

may adversely interact with a possible water shortage in Texas. The contention is rejected. See our ruling upon PIRG Contention 3, supra.

2. Petitioner asserts that BWR's have had a large number of hydrogen explosions that have injured workers and released radioactivity. At the Special Prehearing Conference, Petitioner cited (Tr. 654) an article that reported the occurrence on December 13, 1977, of two hydrogen explosions at the Millstone Nuclear Power Station, Unit 1, a BWR facility (NUCLEAR SAFETY, Vol. 19, No. 4, July-August 1978). The second of these explosions caused an occupational injury and had an important safety significance for the operation of the reactor. Petitioner further pointed out (Tr. 654) that subsequently there had been a change to 10 C.F.R. Part 50, dealing with this matter. (43 Fed. Reg. 50162, October 27, 1978). Therein a new Section 50.44 was added to 10 C.F.R. Part 50. Both of these citations constitute new information. Although Petitioner does not show whether this information explicitly relates to the proposed ACNGS BWR, it is sufficiently on point to warrant the admission of this contention. Accordingly, the contention, as reworded by the Board, is admitted. Applicant and Staff are directed to present evidence upon the question of whether the proposed ACNGS facility will meet the current requirements of the Commission with respect to standards for combustible gas control. (We note that at the Special Prehearing Conference, Mr. Shreffler, in discussing his Contention 3 - Tr. 655 - also expressed a concern about hydrogen generation, which concern the Board deems to be subsumed in Contention 2.)

3. Petitioner asserts that, in the event of a small-pipe break in the ECCS, the reactor could heat up to dangerous levels and could result in the possible release of excess radioactivity. As noted in the above discussion of Contention 2, Petitioner cites modifications to 10 C.F.R. Part 50. The above Federal Register citation includes an amendment to Appendix A of 10 C.F.R. Part 50, dealing with Criterion 50 - Containment Design Basis. This citation constitutes new information, although Petitioner does not show whether this information explicitly relates to the proposed ACNGS. However, the Petitioner's postulated small-pipe break in the ECCS can potentially constitute a degradation of emergency core cooling functioning. Accordingly, this contention as reworded below by the Board is admitted. Applicant and Staff are directed to present evidence on the issue of whether the proposed facility will meet the current requirements of the Commission with respect to Criterion 50 - Containment Design Basis.

4. Petitioner contends that, due to inadequate strength, there is a danger that the concrete pedestal supporting the reactor will be weakened or broken as the result of a loss-of-coolant accident (LOCA). At the Special Prehearing Conference, Petitioner cited at Tr. 655 - the existence of testimony before the Joint Committee on Atomic Energy by former G.E. engineers, a portion of which appeared in the Congressional Record-Senate of February 25, 1976. This testimony was cited by

Petitioner in an effort to provide the basis for his contention, and to satisfy the Board's requirement regarding new evidence or information. Having reviewed the above-cited portion of the Congressional Record in its entirety, and in particular the subsection relevant here (3c. Structural Integrity of Federal Concrete, p. 4358), we find considerable equivocation in the discussion of this matter. It is stated that a LOCA can result in thermal shock to the reactor pedestal, which could result in cracking of the concrete foundation, which could effect the continued safe operation of a BWR. It is further stated that this accident may have already occurred at Dresden Units 2 and 3 in 1971. Such a discussion is too speculative and does not provide a reasonably specific basis for a challenge by Petitioner to the proposed ACGNS design. Hence, the contention is rejected.

5. Petitioner alleges in substance that geothermal energy is an economically feasible alternative. The contention is rejected for the same reasons we rejected Day Contention 1, supra.

6. Petitioner asserts that the design for the rad-waste system is inadequate since it does not provide for any additional margins for growth and that said design would have to be extensively and expensively modified if regulations for radioactive emissions are changed. The contention is rejected because it is vague in not explaining "additional margins for growth", lacks basis in not explaining why additional margins are needed, lacks specificity in not identifying any portion of the Staff's or Applicant's analysis which is inadequate, and is purely speculative in suggesting that the regulations might be changed in the future.

7. Petitioner asserts that the investigation of potential earthquakes is incomplete because 1977-78 findings at the North Anna Plant showed that the danger of earthquakes existed where large man-made lakes had been created and that such an incident had occurred at Lake Meredith in Texas in 1966. The contention is rejected because it is not based upon new evidence or information unavailable prior to December 1975. The Lake Meredith incident occurred in 1966 and the subsequent North Anna incident provided supplementary information. Petitioner admits that this is not per se new information (Tr. 657). Moreover, he fails to show that said incidents in any way cast doubt upon the adequacy of the safe shutdown earthquake design feature of the proposed ACNGS.

Mr. Shreffler is admitted as a party, and his Contentions 2 and 3, as reworded, are admitted as issues in controversy.

ANN WHARTON

A. Interest

See footnote 6, supra

B. Contentions

1. Petitioner asserts that there is no pressing need for nuclear energy because various newspaper articles reflect that there will be a natural gas glut if price controls are removed. The contention is rejected because it is speculative. Further, Petitioner fails to specify wherein the discussion of the natural gas alternative at pages S.9-2 and S.9-3 of the Final Supplement to the FES is inadequate. Indeed, said document recognized that "Deregulation of the price of newly developed

natural gas supplies is expected to stimulate supply and restrain growth of demand thus eliminating the current shortage problems". Further, while the Final Supplement proceeds to caution that ". . ., deregulated prices approaching $2.00 per 1000 ft.^{3}, which are typical in the unregulated intrastate market, would be equivalent to the current cost of fuel oil and, therefore too costly for boiler fuel", Ms. Wharton does not address this point.

2. Petitioner alleges that insurance coverage is minimal in the event of a nuclear accident. The contention is rejected. See our ruling upon Anderson Contention 3, supra.

3. Petitioner alleges in substance that there has been no showing that any benefit to the public would result from the construction of the proposed facility. However, Section S.10.4, Cost-Benefit Balance, of the Final Supplement to the FES does analyze the costs and benefits, but the Petitioner fails to specify wherein, if at all, this analysis is erroneous. The contention is vague and unspecific, and accordingly is rejected.

4. Petitioner contends that there is no such thing as a safe level of radiation and that, individuals with genetic or physical disabilities are especially vulnerable. The contention is rejected for the reasons set forth in our discussion of Doherty Contentions 1 and 2 and Framsons' Contention 6.

While Ms. Wharton is not admitted as a party, she may make a limited appearance statement pursuant to 10 C.F.R. § 2.715(a).

JOE C. YELDERMAN

A. Interest

See footnote 6, supra

B. Contentions

1. Petitioner contends that (a) the Staff did not accurately account for the growth of population within fifty miles of the plant, (b) Staff did not consider radiation doses to the population outside a fifty mile radius of plant, and (c) "safe" levels of low level radiation have been found recently not to be safe. The contention is rejected. Subcontention (a) fails to specify what are the errors in Table S.2.1 and S.2.2 in the Final Supplement to the FES which project increases in population to the year 2020 from within two miles to within fifty miles of the proposed site. Subcontention (b) is erroneous - Table S.5.15 at page S.5-28 of the Final Supplement to the FES does set forth the U.S. population - dose commitment for the proposed site. Subcontention (c) constitutes an impermissible challenge to Commission regulations (see our rulings upon Doherty Contentions 1 and 2, Framsons' Contention 6, Hinderstein Contention 11, Hooker Contention 1, and Loe Contention 1).

While Dr. Yelderman is not admitted as a party, he may make a limited appearance statement pursuant to 10 C.F.R. § 2.715(a).

HOUSTON GULF COAST BUILDING AND
CONSTRUCTION TRADE COUNCIL

On November 10, 1978, the Council filed a Petition For Leave To Intervene. Applicant supported the petition while the Staff opposed.[12/]

The Board's Corrected Notice of Intervention Procedures was published at 43 Fed. Reg. 40328 (September 11, 1978), which directed that petitions for leave to intervene be filed on or before October 11, 1978. Pursuant to 10 C.F.R. § 2.714(a) and (d) we must determine whether or not this untimely filed petition should be granted after balancing the following factors:

1. Good cause, if any, for failure to file on time.

2. The availability of other means whereby the petitioner's interest will be protected.

3. The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

4. The extent to which the petitioner's interest will be represented by existing parties.

5. The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

6. The nature of the petitioner's right under the Act to be made a party to the proceeding.

12/ Petitioner Hooker filed a response opposing the granting of the petition on November 27, 1978. We have read Ms. Hooker's submission and do not reach the question of whether a petitioner has standing to file such a response.

> 7. The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
>
> 8. The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

Regarding the first factor, petitioner alleges that it was unable to intervene prior to the acquisition of authority to do so and such authority could not be obtained until November 8, 1978, owing to its size and complexity. This is a conclusional statement - Petitioner does not specify the date upon which it sought authorization from its membership and fails to particularize any subsequent events which would show that, due to circumstances beyond its control, it was unable to file by the due date. Having failed to furnish a good excuse for its tardiness, the Council shoulders a heavy burden in attempting to justify intervention on the basis of the remaining factors in our regulation. See Nuclear Fuel Services, Inc., et. al. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975).

Regarding the second factor, Petitioner asserts that there are no other means available to protect its interests in light of the fact that the National Lawyers Guild purported to represent union members. However, during the Special Prehearing Conference, the National Lawyers Guild stated that it did not represent any unions. (Tr. 632).

With respect to the third factor, Petitioner avers that its participation is required in order to develop a sound record, since, if

it is not permitted to participate, the National Lawyer Guild's misrepresentations will be unchallenged. We are not advised what these misrepresentations consist of, and, in any, the Council's apprehensions are without foundation since we have denied the Guild's petition for leave to intervene.

The fourth factor does not weigh in the Council's favor. It asserts that no other party would be as capable to directly present the effect on organized labor of denial or the delay in the issuance of the construction permit. However, it appears that Applicant and Staff in their environmental reviews have taken the same views as the Council's with regard to need for power, to there being no environmentally preferable alternative source of power, and to the recreational value of the cooling lake.

The fifth factor weighs against the Council's intervention. It fails to identify any of its rank and file worker-members who allegedly reside or are employed within the Applicant's service area. Drawing down from our discussion relating to the National Lawyers Guild, supra, we conclude that the Council appears to seek vindication of its own value preferences rather than specifically allege facts showing that it actually represents named members who reside or are employed at certain distances from the proposed plant and who claim that they will be adversely affected by a denial of the construction permit.

Since the Council has not identified its worker-members and has not shown where they reside and work, we are unable to weigh the seventh and eighth factors.

From the above discussion, it is clear that the Council has not shown good cause for its failure to timely file its petition and that our assessment of the other factors weighs against allowing the petition for leave to intervene. Moreover, we conclude that its participation would not produce a valuable contribution to our decisionmaking process. See Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 (1977). Accordingly, the Council's petition for leave to intervene is denied. Limited appearance statements may be made.

Pursuant to 10 C.F.R. § 2.714a, an Order wholly denying a petition for leave to intervene is appealable by the petitioner on the question whether the petition should have been granted in whole or in part. Further, an Order granting a petition for leave to intervene is appealable by a party other than the petitioner on the question whether the petition should have been wholly denied. This Order may be appealed to the Atomic Safety and Licensing Appeal Board within ten (10) days after service of this Order. The appeal shall be asserted by the filing of a notice of appeal and accompanying supporting brief. Any other party

may file a brief in support of or in opposition to the appeal within ten (10) days after service of the appeal.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

Dr. E. Leonard Cheatum, Member

Gustave A. Linenberger, Member

Sheldon J. Wolfe, Esquire
Chairman

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