

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Atomic Safety & Licensing Appeal Board

In the Matter of	X	
HOUSTON LIGHTING & POWER CO.	X	Docket 50-466
(Allens Creek Unit 1)	X	
	X	
	X	

TexPIRG's RESPONSE TO APPEAL OF POTTHOFF  
Re: PETITION TO INTERVENE

On Mar. 11, 1980 the Board in the above-styled proceeding denied a petition for leave to intervene by Rick Potthoff. Pursuant to 10 CFR 2.741A, Intervenor TexPIRG files this response to the denial in whole of his petition before the Appeal Board. \*/

The Board in the instant order ruled that Potthoff contention 6 regarding biomass conversion of energy is not admissible into controversy.

The Board essentially ruled that the contention failed to show any "environmental superiority" of biomass conversion. (relative to nuclear power). Petitioner did allege, however, that such energy production is "environmentally preferable." Surely the Board does not expect to hold a non-lawyer such as Mr. Potthoff to distinguishing any semantic subtleties between "preferable" and "superiority." Thus, the remaining question is what form of basis is the petitioner required to show?

We believe it is obvious that Mr. Potthoff's contention should be regarded as an allegation that the EIS is insufficient. At S.9-7, the Final Supplement to the Final Environmental Statement

\*/ That provision of the rules provides that any party may bring before the Appeal Board whether a petitioner's intervention request should have been wholly denied. In the alternative, we request that this document be considered as a response to Mr. Potthoff's appeal.

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considers as an alternative "Photosynthetic materials and organic wastes." Thus, the contention is a direct challenge to the consideration of biomass given by the Staff.

The FS-FES concludes at S.9-9 that "the lack of demonstrated technology on a commercial basis eliminates the potential future energy sources from consideration as alternatives for central station power generation by the 1980s."

Mr. Potthoff has provided an arguable basis for disagreeing with that conclusion. He cites a report indicating a capital cost half that of the Allens Creek unit. If the petitioner is correct then denial of the alternative by the FS-FES because it is not a reasonable alternative is inaccurate. \*/ The FS-FES concedes the technical feasibility of methane conversion, but questions "the economics of the process." (at S.9-7)

Therefore, the Midland decision cited by the Board in rejecting this contention is not applicable. Consumers Power Company (Midland Units 1 and 2) 7 NRC 155, 162 (1978) relates to a contention regarding Staff analysis of coal generation, in which intervenors argued that the Staff's cost estimates were excessive. But, in that case, the Staff had not rejected coal generation because of feasibility or economics, but due to adverse environmental impacts. On the contrary, in the instant contention the Staff's objection relates more to economic feasibility than to environmental ramifications of biomass conversion.

The only substantial environmental objection to biomass raised

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\*/ Incidentally, we would point out that Dr. Art Few of Rice University won the Mitchell Prize for his paper on biomass conversion which suggested that biomass is the most efficient, feasible, and economic form of solar energy production.

in the FS-FES relates to land usage. ("The land requirements are greater than the proposed ACNGS...The staff does not believe that growing plants for electrical energy production is acceptable in Texas." at S.9-7).

But utilizing marine plants grown in the Gulf of Mexico, as stated in Potthoff contention 6, obviously does not entail land usage. The environmental reservation as stated in the FS-FES does not apply then.

Petitioner Potthoff has challenged the EIS' discussion of alternatives in this proceeding, and his inclusion as an intervenor is called for in order to further "careful and informed decision-making" required by NEPA.

Respectfully Submitted,

*James Scott, Jr.*  
James Scott, Jr.  
Counsel for TexPIRG

I, Clarence Johnson, certify that this document has been served upon the Atomic Licensing Appeal Board and the following individuals by deposit in the U.S. Mail on or before Mar. 28 1980

Newman Copeland, Potthoff, Sohinki, Wolfe, Doherty, Lowerre Hinderstein McCorkle, Marrack, Doggett, Baker, and Bishop.

*Clarence Johnson*