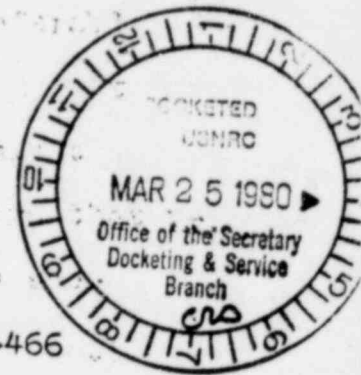


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

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



In the Matter of:  
HOUSTON LIGHTING AND POWER COMPANY }  
(Allens Creek Nuclear Generating }  
Station, Unit 1)

Docket No. 50-466

APPEAL IN BEHALF OF F. H. POTTHOFF, III, PETITIONER

John F. Doherty, of 4327 Alconbury Lane, Houston, Texas, files this "Appeal in behalf of F. H. Potthoff, III, of Houston, Texas, an Petitioner for leave to Intervene in the above Construction license proceeding. This filing is pursuant to the Licensing Board Order of March 11, 1980 (here after "Order") on page 109, that, "[a] party other than the Petitioner may appeal to the Appeal Board on the question wheter any petition for leave to intervene should have been wholly denied." F. H. Potthoff was wholly denied in six contentions, having established standing. (Order, pg. 12). This Appeal is timely under this "Right of Appeal" (Order, pg. 109), and is based entirely on the issue of admissibility of Contention VI. (Exhibit)

Mr. Potthoff was denied for failure to "[p]rovide a basis for alleging that (such) a large scale marine biomass farm would be an environmentally superior alternative" proposed project. (Order, pg. 12) Instead, Mr. Potthoff stated in his 6/1/79 submission of Contention VI (See Exhibit Attached) that, "[I] contend building and operating a marine biomass farm, or other biomass production systems, would be environmentally preferable to ACNGS (Allens Creek Nuclear Generating Station) and ask the Board to deny the permit under the NEPA."

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Where the Licensing Board may have interpreted "preferable" as "superior", in Mr. Potthoff's behalf, it appears it was not willing to infer that a Petitioner not trained in law might well presume that the basis would be obvious. It appears that Mr. Potthoff thought the Board would take notice without a specific reference to the advantages of biomass energy production to the South Texas region over the inundation of land for the cooling lake and land destruction for uranium mining to fuel the project for 40 years.

The Appeal Board may wish to note that when a layperson creates a legal document, there is often some latitude allowed because of the given lack of training of the creator. Hence, in Eaton v. Brown, 193 U.S 411, 24 S. Ct. 437, 48 L. Ed. 730, 1902. Justice Holmes, speaking for The Court said of a will, "[T]here is no doubt either of the danger in going beyond the literal and grammatical meaning of the words." Yet, the court applied the intent of the writer instead of her expression, resulting in a different disposition of her property. In the instant situation, Mr. Potthoff, being untrained, probably thought the Board would automatically infer that the growing of plants must have some arguable benefits over the effects of nuclear stations on the environment, and passed over their mention.

This Appeal is not to argue that there are such superiorities, in this particular special licensing instance, but rather from the known generalities with regard to biomass conversion viewed as a national solution to energy supply, many superiorities have been alleged, from which a citizen-petitioner might well believe

it unnecessary to indicate the advantages.

Therefore, this Party preys the Appeal Board reverse the Board Order of March 11, 1980 with regard to the Contention VI of F. H. Potthoff III, and admit him as an Intervenor in this proceeding for the purpose of arguing the environmental superiority of marine biomass energy production.

Respectfully Submitted,  
*John F. Doherty*  
John F. Doherty

CERTIFICATE OF SERVICE

I hereby certify that copies of "APPEAL IN BEHALF OF F. H. POTTHOFF III, PETITIONER" in the above captioned proceeding have been served on the following by deposit in the U. S. Postal Service, this 2/27 of March, 1980:

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