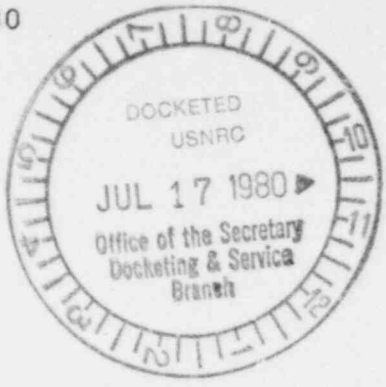
July 16, 1980



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY LICENSING BOARD

In the Matter of	)	
	)	
TEXAS UTILITIES GENERATING COMPANY, et al.	)	Docket Nos. 50-445 50-446
	)	
(Comanche Peak Steam Electric Station, Units 1 and 2)	)	

APPLICANTS' ANSWER OPPOSING ACORN'S MOTIONS FOR RECONSIDERATION, FOR CERTIFICATION OF CONTENTIONS AND FOR RECONSIDERATION OF THE WORDING OF CONTENTIONS

Pursuant to 10 C.F.R. §2.730(c), Texas Utilities Generating Company, et al. ("Applicants") hereby submit an answer in opposition to the Motion filed by the Texas Association of Community Organizations for Reform Now ("ACORN") on July 1, 1980, with the Atomic Safety and Licensing Board ("Board") in the captioned proceeding. Therein ACORN moved that the Board reconsider or in the alternative certify to the Atomic Safety Licensing and Appeal Board ("Appeal Board") the denial of certain ACORN proposed contentions in the Board's June 16, 1980, "Order Subsequent to the Prehearing Conference of April 30, 1980" ("Order"). ACORN also moved the Board to reconsider the wording of certain accepted contentions. Applicants hereby submit that the Board should deny each of ACORN's motions.

I. ARGUMENT

In general, we wish to note that ACORN has not raised any new or intervening information which was not before the Board when it issued its Order. Rather, ACORN is merely quibbling with the Board and the manner in which the Board chose to record its decision on admission of contentions. ACORN seems to be protesting that it merely is dissatisfied with the way in which the Board wrote its Order. Absent some substantive and at least arguably meritorious claim by ACORN, its motions border on frivolity which obviously has no place in this proceeding.

A. The Board Need Not Address Every Argument Of ACORN On Its Contentions

A decision by an Atomic Safety and Licensing Board is sufficiently detailed to satisfy the Admnistrative Procedure Act ("APA"), 5 U.S.C. §551 et seq., and the Commission's Rules of Practice if it makes clear its basis and sufficiently informs parties of the disposition of their contentions, even where all factual and legal arguments raised by the parties are not addressed in the decision. See Boston Edison Company (Pilgrim Nuclear Power Station), ALAB-83, 5 AEC 354, 371 (1972), aff'd, Union of Concerned Scientists v. AEC, 499 F.2d 1069, 1094 (D.C. Cir. 1974); Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit 2), ALAB-78, 5 AEC 319, 321 (1972). The Appeal Board in Prairie Island aptly stated this principle, as follows:

> We deem it to be the general duty of licensing boards to insure that initial decisions and miscellaneous memoranda and orders contain a sufficient exposition of any ruling on a contested issue of law or fact to enable the parties, and this Board on its own review, readily to apprehend the foundation for the ruling. [Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-104, 6 AEC 179, 179 n. 2 (1973) (emphasis added).]

This Board's Order obviously satisfies the above standards. The issues before the Board were whether proposed contentions were admissible in this proceeding. The Board found, and clearly set forth in its Order, that each ACORN contention not admitted failed to meet one or more of the Commission's requirements for admission of contentions in an operating license proceeding, as set forth in applicable Commission regulations and case law. Thus, the basis for foundation for the Board's ruling on ACORN's proposed contentions is clearly apprehensible from the Order. There is no legal requirement that the Board provide a detailed discussion of each of ACORN's explanations and arguments advanced in support of its contentions. Accordingly, the Board should deny ACORN's motion for reconsideration of the Order.

B. ACORN's Application Of The Law Governing Admission Of Contentions Is Erroneous

ACORN contends that several of its proposed contentions which were denied admission should be admitted as a matter

of law.[1] However, ACORN's application of the standards governing admission of contentions to these proposed contentions is erroneous.

At the outset, we wish to reiterate our view that the Allens Creek[2] decision by the Appeal Board did "not change the applicable law governing the admissibility of contentions." Applicants' Post Prehearing Conference Memorandum (May 12, 1980), at 2. Our view was that the discussion in Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423 (1973) set forth that applicable law, and that ALAB-590 merely applied that law. Id., at 2. This view was recently confirmed by the Commission itself when it declined to review sua sponte the Allens Creek decision, as follows:

> The Commission's determination not to review the Atomic Safety and Licensing Appeal Board decision does not constitute a departure from the standard for determining whether a prospective intervenor has set forth an acceptable contention as articulated in Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423 (1973). [Houston Lighting & Power Co., Allens Creek Nuclear Generating Station, Unit 1) Commission Order (June 20, 1980) (emphasis added).]

1/ ACORN does not object to the aspect of the Board's Order denying admission of its proposed contentions 16, 19 and 29. ACORN has, therefore, waived its right to object to the Order in that regard, and the Board should not reconsider its decision denying those contentions in any event.

2/ Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-590, 11 NRC ___ (1980).

To the extent that this Board's June 16 Order reflects (as we suspect) an interpretation by the Board that ALAB-590 broadened or relaxed the standards for admission of proposed contentions, the Board should reconsider any contentions admitted pursuant to such an erroneous interpretation. Upon such reconsideration the Board should amend its Order to reflect which contentions admitted in that Order must now be denied as failing to satisfy the standards for acceptable contentions.

Against this background, ACORN's arguments are clearly legally flawed. ACORN's arguments are addressed, as follows:

1. Proposed contentions 12, 17, 18, 21 and 23.

ACORN argues that these proposed contentions should be admitted, irrespective of the removal of the issues raised from the list of unresolved generic safety issues, on the grounds that they nonetheless meet the standards for admitting contentions, as interpreted by the Appeal Board in Allens Creek (ALAB-590).

To the contrary, the Board correctly found that ACORN's bases for these contentions, viz., that the issues raised by these contentions were unresolved generic safety issues, "dissolved" with their removal by the NRC from that unresolved issues list. As for the possibility that there might be other bases for these proposed contentions which

would warrant their admission, the Board correctly noted, independently from its finding that no bases existed for admission of these contentions as generic unresolved safety issues, that each of these contentions failed to satisfy the basis requirement of 10 C.F.R. §2.714(b) and that proposed contentions 12, 17, 18, 21 and 23 failed to meet other requirements for admitting contentions. Clearly, the Board correctly applied applicable standards for denying admission of all five contentions, and thus should not reconsider its ruling on these contentions. ACORN's failure to even address in its motion the other reasons the Board assigned for not admitting contentions 12, 17, 18, 21 and 23 further compels that the Board not disturb its ruling that these contentions are not admissible.

2. Proposed contentions 2 and 8.

ACORN argues that the Board erred in finding that proposed contention 2 was impermissibly vague and that proposed contention 8 failed to demonstrate the requisite nexus to the Comanche Peak facility. On the contrary, the Board correctly applied the requirements for admitting contentions in denying admission of proposed contentions 2 and 8 and should not reconsider its Order in that regard. ACORN's failure to even address the Board's determination, independent of the above grounds, that both proposed contentions should also be denied for lack of a basis as

required by 10 C.F.R. §2.714(b), and that proposed contention 2 lacked the requisite specificity required by 10 C.F.R. §2.714(b), further compels that the Board not disturb its ruling that these contentions are not admissible.

3. Proposed contentions 28 and 30.

ACORN disagrees with the Board's conclusions that proposed contentions 28 and 30 lacked sufficient basis pursuant to 10 C.F.R. §2.714(b) for admission in this proceeding. ACORN would have the Board discuss "why those contentions lacked basis." But, as discussed above, the Board need only set forth an apprehensible foundation for its ruling denying the contentions. Prairie Island, ALAB-104, supra. That foundation is the determination that the contentions do not satisfy the basis requirement of 10 C.F.R. §2.714(b). ACORN cannot impose upon the Board a requirement that the Board expound in detail as to why each contention lacks basis. The fault for those shortcomings rests with ACORN. Accordingly, the Board should deny ACORN's motion for reconsideration of its ruling denying admission of ACORN proposed contentions 28 and 30.

4. Proposed contentions 26 and 27.

While ACORN does not contest the Board's view of the applicable standards for admitting "need for power" contentions at the operating license stage, it apparently believes the

Board has misapplied those standards with respect to ACORN's proposed contentions 26 and 27. However, the Board clearly and correctly applied applicable Commission regulations and case law in a concise discussion regarding these contentions. The Board should not, therefore, reconsider its Order on these grounds. Further, ACORN again argues that the Board did not address a particular argument raised by ACORN. As discussed above, see Section I.A., the Board need not discuss and reject every argument raised in support of a proposed contention. The Board specifically addressed the subject of the argument when it found on the totality of the record that there was no "significant new information" which warranted admission of the contentions. Accordingly, the Board should deny ACORN's motion for reconsideration of the Board's Order with respect to the denial of proposed contentions 26 and 27.

C. ACORN Has Not Shown That The Board Abused Its Discretion In Establishing The Wording Of Contentions 5 And 23

The Board has the authority to define the issues to be addressed in licensing proceedings. 10 C.F.R. §2.714(f), 2.715a(d), and 2.752(a)(1)(c). With respect to the particular requests for rewording of contentions by ACORN, it has not demonstrated that the Board has incorrectly exercised its authority to define the issues for the proceeding.

Accordingly, the Board should deny ACORN's motion to revise the wording of contentions 5 and 23. 3/

Further, ACORN's "offer of proof" (Inspection and Enforcement Reports) with respect to issues it believes should be expressly included in contention 5 is no more than an attempt to untimely amend the basis for its proposed contention 14. ACORN totally fails to demonstrate that it has met the requirements of 10 C.F.R. §2.714(a)(1)(i)-(v) for admission of such late-filed purported bases. In fact, ACORN satisfies none of those factors. Accordingly, the Board should not even consider those Reports in deciding whether to reconsider the wording of contention 5.

D. The Board Should Not Certify The Denial Of ACORN Proposed Contentions To The Appeal Board

Certification of Licensing Board decisions to the Appeal Board is the exception and not the rule. Toledo Edison Company (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 759 (1975). In any event, the Licensing Board should certify questions to the Appeal Board only when "a prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense."

3/ Particularly with respect to contention 5 (quality assurance/quality control), ACORN has had ample opportunity to present to the Board its position on the wording of that contention, both in its April 10, 1980 Statement of Positions, at the prehearing conference and in a brief filed with this Board on May 12, 1980. ACORN raises no new arguments which warrant having the Board again consider the wording of the contention.

10 C.F.R. §2.730(f), 2.758(b)(1); See Public Service Company of New Hampshire (Seabrook Station Units 1 and 2) ALAB-271, 1 NRC 478, 483 (1975).

Applying these principles to ACORN's motion for certification, it is apparent that the applicable requirments have not been met. Indeed, the public interest will be adequately protected in the ordinary course of this proceeding, without piecemeal consideration by the Appeal Board of decisions made at this stage by this Board. Neither would any unusual expense or delay be avoided by certification of the Board's Order to the Appeal Board. Accordingly, the Board should deny ACORN's motion for certification to the Appeal Board of this Board's decision on ACORN's proposed contentions.

II. CONCLUSION

For the foregoing reasons, Applicants submit that ACORN's motions for reconsideration, for certification of the Board's Order to the Appeal Board and for rewording of admitted contentions should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicants' Answer Opposing ACORN's Motions for Reconsideration, Certification of Contentions, and Reconsideration of the Wording of Contentions," in the captioned matter were served upon the following persons by deposit in the United States mail, first class postage pre-paid this 16th day of July, 1980.

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