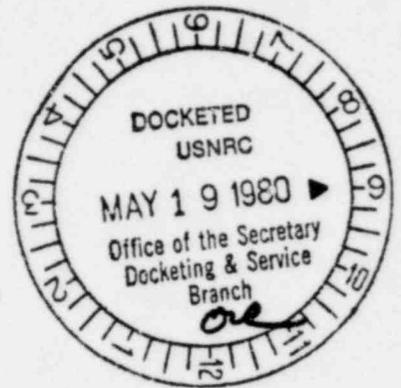


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

Sheldon J. Wolfe, Esquire, Chairman
Dr. E. Leonard Cheatum, Member
Gustave A. Linenberger, Jr., Member



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

Docket No. 50-466 CP

ORDER
(May 15, 1980)

Mr. John Doherty, an intervening party, filed in effect on April 8, 1980, (1) a motion for leave to amend his Contention 17, and (2) a motion for leave to file out-of-time Contentions 48 and 49. In a letter dated April 21, 1980, Applicant advised that it agreed that Doherty Contention 17 should be amended and that, in fact, Mr. Doherty and Applicant had conducted discovery as if said contention had been so amended. In a response filed on April 22, 1980, Applicant opposed the granting of the motion for leave to file out-of-time Contentions 48 and 49. In a response filed on April 28, 1980, the Staff opposed the granting of the motions relating to the amendment of Contention 17 and to the untimely filing of Contention 49 but supported the granting of the motion for leave to file Contention 48. Mr. Doherty did not respond to Staff's and Applicant's submissions.

Re: Amendment of Contention 17

Mr. Doherty seeks to amend Contention 17 in order to add to the events listed therein an Anticipated Transient Without Scram event which, when combined with a single (or several) stuck relief valve would endanger his health and safety. The motion for leave to amend is denied. As the Staff has pointed

8005230592

out, the proposed amendment is subsumed within Doherty Contention 8, which has been previously admitted (see Orders of March 15 and April 11, 1979), and which, in pertinent part, alleges that "petitioners are not adequately protected against" ATWS. There is this subsumption because the evidence adduced upon the consequences of ATWS occurrences must necessarily consider stuck relief valves. To permit this amendment would be to clutter the record with duplicative contentions. Factors (ii) through (v) of 10 C.F.R. § 2.714 (a)(1) weigh against granting the instant motion.

Re: Contention 48

Mr. Doherty contends that the ACNGS should be designed with a control rod drive (CRD) return line, since this would provide an additional source of high pressure water that could function as an additional safeguard against core damage. He cites three operating reactor incidents wherein the availability of such a line is alleged to have served an important function in mitigating the unfavorable impact of the incidents. Alleging further that the ACNGS can be operated for as long as one week with the high pressure core spray system out of operation, Intervenor emphasizes the importance of the CRD return line as a backup system.

Regarding timeliness, Intervenor cites Staff correspondence to Applicant, dated March 11, 1980, regarding removal of the return line in connection with Generic Technical Activity A-10 as his first exposure to the Staff's concern about the removal of such a line, a matter that Intervenor has not seen discussed in the PSAR. Hence his own concern is generated by new information. Since the ACNGS is being designed without such a return line, apparently in

conformance with the resolution of Task A-10, Intervenor sees no other means to protect his interest. As to assistance in developing a sound record, Intervenor sees his participation on this issue as the only way the pros and cons of the CRD return line removal can be weighed. There being no other similar contention, Intervenor's interest, he feels, will not be protected by other parties. Regarding broadening of the issues and delay of the proceeding, Intervenor views the litigation of this issue, in the face of numerous other admitted safety issues, as not unduly expanding or delaying the proceeding.

The Staff's response finds Mr. Doherty's defense of the contention, on balance, to be persuasive and Staff recommends that Contention 48 be admitted. Applicant finds that the contention lacks a supportable basis, in that there are other options than the CRD return line for delivery of coolant to the reactor vessel. PSAR citations are given to support this position but the acceptability of these options is not assessed by us since to do so would involve the merits of the contention. Applicant also finds insufficient reason for late filing and recommends that Contention 48 be rejected.

Based upon our review, we find that he has prevailed with respect to the five factors set out in 10 C.F.R. § 2.714 (a)(1), in particular with respect to good cause for failure to file on time. Additionally, we note in NUREG-0619^{1/}

^{1/} BWR Feedwater Nozzle and Control Rod Drive Return Line Nozzle Cracking - Resolution of Generic Technical Activity A-10, April, 1980. Although Mr. Doherty may not have reviewed this document prior to framing his contention, we find the discussion therein supportive of his desire to inquire further.

issued for comment, that the ACNGS is not one of the classes of BWR's given categorical permission to eliminate the CRD return line as a solution to an observed CRD return line nozzle cracking problem. The motion for leave to file out-of-time is granted and Doherty Contention 48, the bases of which are set forth with reasonable specificity, is admitted as an issue in controversy.

Re: Contention 49

This proposed contention alleges that, in being virtually devoid of rock or rock-like materials, the reactor site would be unable to contain or delay a core melt, and thus that a "core ladle" composed of interlocked magnesium bricks should be required in the ACNGS design. We do not have to reach and weigh the five factors in § 2.714(a)(1). By this time, the Intervenor should be well aware of the Commission's policy prohibiting litigation of Class 9 accidents absent unusual circumstances. See Offshore Power Systems (Floating Nuclear Power Plants), CLI-79-9, 10 NRC 257 (1979). See also Public Service Company of Oklahoma, et. al. (Black Fox Station, Units 1 and 2), CLI-80-8, 11 NRC ____ (March 21, 1980) wherein the Commission stated in the slip opinion at pages 3-4:

Because the existing policy on Class 9 accidents was not displaced in Offshore Power and would not be displaced pending generic consideration of Class 9 accident situations in policy development and rulemaking, the Commission envisioned that the Staff would bring an individual case to the Commission for decision only when the staff believed that such consideration was necessary or appropriate prior to policy development. The Commission did not expect that such discretion was to be exercised without reference to existing staff guidance on the type of exceptional case that might warrant additional consideration: higher population density, proximity to man-made or natural hazard, unusual site configuration, unusual design features, etc., i.e., circumstances where the environmental risk from such an accident, if one occurred, would be substantially greater than that for an average plant. [footnote deleted]. The broad issue of consideration of Class 9 accidents

at land-based reactors was not before the Commission in Offshore Power and we did not believe that the NRC's generic policy on consideration of Class 9 accidents would properly be developed ruling on a case-by-case basis. Such piecemeal consideration is not appropriate to such an important policy area, and we decline to adopt such an approach now.

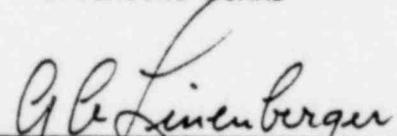
We are advised by the Staff that it has not determined that the Allens Creek plant or site is so exceptional that it should be proposed to the Commission as a situation requiring waiver of the Commission's policy. Accordingly, the motion for leave to file out-of-time is denied.

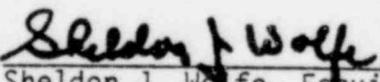
Discovery upon Doherty Contention 48 shall be initiated immediately and be completed by July 9, 1980.

Dr. Cheatum concurs but was unavailable to sign the instant Order.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD


Gustave A. Linenberger, Jr.,
Member


Sheldon J. Wolfe, Esquire
Chairman

Dated at Bethesda, Maryland
this 15th day of May, 1980.