

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

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ACORN'S STATEMENT OF POSITION ON APPLICATION  
OF ALAB-590 TO ADMISSIBILITY OF CONTENTIONS

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NUCLEAR REGULATORY COMMISSION

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During the pre-hearing conference in Fort Worth on April 30, 1980, the NRC Staff distributed copies of Houston Lighting and Power Company (Allen's Creek Nuclear Generating Station, Unit 1), ALAB-590, April 22, 1980, and represented that decision as the most recent articulation of the Appeal Board on what constitutes an admissible contention. Pursuant to the permission granted by the Licensing Board at the pre-hearing conference on May 1, 1980, ACORN submits this statement of position on the application of ALAB-590 to the admissibility of ACORN's contentions.

The Allen's Creek opinion is entirely consistent with ACORN's statement of position on contentions submitted to the Licensing Board on April 10, 1980. Generally supportive of ACORN's argument that assertions are appropriate for contentions at this stage of the proceeding, the Allen's Creek ruling provides a solid foundation for ACORN's position that specificity

is to be determined by the plain language that appears in the contentions and their bases. In fact, the Allen's Creek opinion on Page 12 relies upon the same language from Duke Power Company (Transportation of Spent Fuel from Oconee to McGuire), ALAB-528, 9 NRC 146, 151 (February 26, 1979) which was quoted by ACORN on Page 2 of its Statement of Position on Contentions as support for the fact that ACORN has met the statutory requirement of specificity.

The Appeal Board in the Allen's Creek opinion found the same common thread in the Duke Power Company, Grand Gulf, North Anna, and Philadelphia Electric Company cases as found by ACORN and as argued in the preliminary pages of its Statement of Position on Contentions - namely, that an Intervenor is under no obligation to justify its allegations or to provide the underpinnings to its assertions. Allen's Creek, Page 11. ACORN is under no obligation to explain "why" its allegations are valid. Allen's Creek, Page 8.

Relying upon the Duke Power Company case, ACORN argued in its Statement of Position on Contentions that "judgments as to whether a concern or assertion is justified must be left to a stage of the proceeding which addresses the merits of the controversy". (Statement of Position, Page 3). There is harmony between that position and the Appeal Board's explanation of the Grand Gulf and Duke Power Company opinions. Allen's Creek, Pages 11 and 12. The point is then driven home by statements from the Appeal Board that whether an Intervenor

can "prove the assertions underlying the contention is quite beside the point" (Allen's Creek, Page 13) and that the Licensing Board was laboring under a "misconception" that "petitioners for intervention must establish the existence of some factual support for the particular assertions which they have advanced as the basis for their contentions". Allen's Creek, Page 16.

The only harmony between the Appeal Board decision in Allen's Creek and the Statements of Position from the Applicant and Staff on ACORN's contentions is the fact that here as in the Allen's Creek situation, the Applicant and Staff took the position that the contention in question lacked basis, was impermissibly vague, was speculative, and constituted a broad side assertion. Here as in the Allen's Creek situation, those labels must be dismissed as totally inappropriate at this stage of the proceeding. All that is required of ACORN at the petition level is to state its reasons for its contentions, and that responsibility can be discharged by general references and assertions. Allen's Creek, Page 11. Under the analysis given by the Appeal Board in Allen's Creek an unresolved safety issue must constitute a reason or a reasonable basis for the contention.

There is no consistency between the obvious import of the Appeal Board decision in Allen's Creek and the interpretation which the Applicant and Staff wish to give the Appeal Board decision in River Bend. The Applicant and Staff's reliance on River Bend as a bar to admission of ACORN's contentions

is misplaced. The River Bend proceeding involved an entirely different situation than that which is presently before this Licensing Board. The State of Louisiana, participating as an "interested state" in a construction permit proceeding, pursuant to 10 CFR 2.715(a) had not been required to specify contentions. The state simply claimed that the mere existence of a number of unresolved safety problems precluded the ASLB as a matter of law from making the definitive finding required by the Atomic Energy Act that construction of the plant would not prove to be an undue risk to the public health and safety.

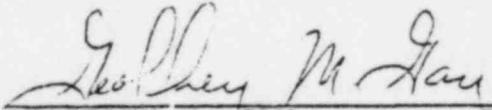
When compelled by the ASLB prior to the hearing to provide further specificity on the unresolved safety problems which it wished to place in issue, the state simply attached a table of contents of the Technical Safety Activities Report with certain items circled. Additionally, the State of Louisiana listed some regulatory guides and some items from the SER. The state provided no explanation of the safety significance of the listed items, or whether in fact they even applied to the River Bend design. Louisiana stated no intention to put on any evidence or to make any evidentiary showing, but simply intended to rely on the ASLB's responsibility. On these facts the Board properly ruled that no nexus between the listed unresolved safety problems and the application had been indicated. The Appeals Board upheld the ASLB. There are two keys to the decision, both long standing in NRC practice.

First, an Intervenor is required to put adversaries on reasonable notice of what issues they will have to meet. (Page 771). Second, some connection must be shown between the issue and the application at bar. (Page 773). In the River Bend case the State made no real attempt to do either.

The situation in CPSES is radically different and easily distinguishable. ACORN has identified a select group of safety issues relevant at the operating license stage. A number of these are also unresolved safety problems and as such are subject of ongoing generic study. In each case the generic Task Action Plan has been cited. Each contention contains an allegation that the problem applies to CPSES. (In this connection, it should be noted that in no case has the Applicant or Staff denied this connection; they merely stand on the argument that ACORN has not in some unspecified way shown enough). In each case ACORN has explained the safety significance of the particular problem in some detail and has alleged explicitly or implicitly that the application does not satisfactorily resolve the problem. In so doing, we have fully met the River Bend requirement that it must appear that the item (1) "has safety significance insofar as the reactor under review" and (2) "the fashion in which the application deals with the matter in question is unsatisfactory." Even in the River Bend decision, the Appeal Board made it clear that an evidentiary showing is not required at this stage of the proceeding. It is entirely inappropriate and unpersuasive for

the Applicant to characterize ACORN's contentions as a "mere listing". ACORN has met the requirements of River Bend, and only when the River Bend case is read as ACORN reads it can it be viewed as consistent with the Allen's Creek opinion. Acceptance of the position of the Applicant and Staff on ACORN's contentions would be to reach the merits which is clearly contrary to the Allens Creek holding.

Respectfully submitted,

  
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DATED, this 12th day of May, 1980.

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CERTIFICATE OF SERVICE

I hereby certify that copies of ACORN's Statement of Position on Application of ALAB-590 to Admissibility of Contentions in the above-captioned proceeding have been served on the following by deposit in the United States Mail, on this the 12th day of May, 1980:

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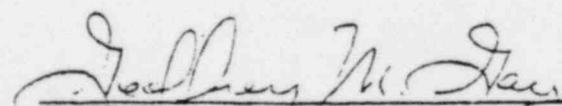
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