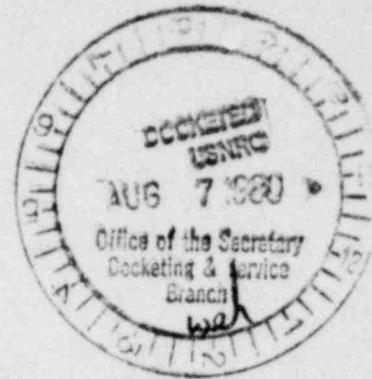


RELATED CORRESPONDENCE



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of  
HOUSTON LIGHTING & POWER  
COMPANY  
  
(Allens Creek Nuclear  
Generating Station, Unit  
No. 1)

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Docket No. 50-466

APPLICANT'S MOTION FOR SUMMARY  
DISPOSITION OF TEXPIRG ADDITIONAL CONTENTION 50

Pursuant to 10 CFR § 2.749, Houston Lighting & Power Company (Applicant) moves the Atomic Safety and Licensing Board (Board) for a decision in Applicant's favor on TexPirg's (Intervenor's) Additional Contention 50, which says that aircraft exposed to emissions from ACNGS may suffer failure or degradation of guidance systems, resulting in air crashes. This Motion sets forth reasons why Applicant is entitled to a favorable decision from the Board. With this motion, Applicant also submits a statement of material facts as to which there is no genuine issue to be heard, and a supporting affidavit signed by Dr. James R. Sumpter, an individual with expertise in the matters addressed by this contention. In addition, Applicant has attached to the Motion an excerpt from the Intervenor's deposition transcript in which the

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contention is discussed. The deposition transcript has been read and signed by the deponent and may properly be considered by the Board in reaching a decision on this Motion. Bloomgarden v. Cover, 479 F.2d 201 (D.C. Cir. 1973).

## I. The Contention

TexPirg Additional Contention 50 [hereinafter referred to as the "latching" contention] says:

TexPirg contends the ACNGS is a hazard to its members health and safety interests, because its radioactive emissions may confuse electronic guidance systems in airplanes in the general vicinity. A B-52 military plane crashed within two miles of a nuclear plant near Charlevoix, Michigan in January, 1971 (its cause was never released) and a light plane crashed in fog on August 25, 1972 at the Millstone Power Station. We have previously contended (TexPirg #6, accepted Feb. 1979) that airplane traffic will increase in the ACNGS area, and seek to add testimony on the guidance system "latching" phenomenon and the danger it imposes on public safety.

## II. Argument

### A. Summary Disposition

The purpose of summary disposition pursuant to 10 CFR § 2.749 is to ensure that only contested issues which involve disputes over material facts are adjudicated at an evidentiary hearing. See, e.g., Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 30-31 (1974). Summary disposition on the pleadings

may be granted where the moving party is entitled to judgment as a matter of law, where it is clear what the truth is, and where no genuine issue of fact remains for trial. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-75-9, 1 NRC 242, 244 (1975); Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3), LBP-73-29, 6 AEC 682, 688 (1973). Section 2.749 thus provides "an efficacious means of avoiding unnecessary and possibly time-consuming hearings on demonstrably insubstantial issues." ALAB-590, Slip Op. at 14-15.

B. Intervenor's Contention

The "latching" contention is particularly appropriate for summary disposition in favor of Applicant. The contention has no basis in fact, yet nevertheless attempts to raise this dubious issue for litigation.

As will be discussed below, no persuasive evidence exists that any aircraft has ever crashed due to the phenomenon of "latching." Intervenor relied upon the musings of one author, unsupported by any scientific evidence, in framing the issue. In reviewing this contention, it was clear to Applicant that Intervenor was unfamiliar with the state of the evidence on the point and with the physical laws relevant to the point. Applicant sought in discovery a more precise statement of Intervenor's concerns, the basis for its contention,

the depth of Intervenor's understanding of the subject matter in issue, and the identity of any expert witnesses under consideration to testify in upcoming hearings. The attached portions of the deposition on these subjects clearly show that: (1) Intervenor's understanding of the contention is at best superficial; (2) the documentation used to support the contention is inadequate; and (3) Intervenor has, thus far, neither identified an expert witness on the contention nor indicated a significant likelihood that expert witnesses will be used in the future.

For example, Mr. Clarence Lee Johnson, the deponent speaking for Intervenor TexPirg on this issue, admitted that the contention "is based almost solely" on a statement in R. Webb, Accident Hazards of Atomic Power 195. (Tr. at 34.) After reviewing the evidence cited by Webb, a single newspaper article about a B-52 crash near a nuclear plant that failed to mention "latching" or any other casual link between the plant and the crash, Mr. Johnson conceded that "it leaves a question as to whether Mr. Webb himself is accurate." (Tr. at 35.)

Mr. Johnson continued: "I'd have to tell you that quite frankly I'm skeptical of the--I'm skeptical of the phenomena." (Tr. at 36.) He suggested that TexPirg would withdraw the contention if no firmer evidence were discovered.

(Tr. at 37.) Other portions of the transcript richly demonstrate the justification for Mr. Johnson's stated skepticism about the merits of his own contention.

To withstand a motion for summary disposition, Intervenor must now present facts which are material and substantial, and which address the precise concerns Intervenor has raised. Discovery indicates this is a responsibility TexPirg has yet to face.

C. The Facts

A coincidental airplane crash near a nuclear facility is no evidence that the nuclear plant was in any way a cause of the crash. It most emphatically does not support the elaborate theory of "latching"--that plant emissions produced ions, that the airplane was exposed to these ions, that these ions "latched" onto the plane's guidance system, and that the "latched" ions caused the system to malfunction, resulting in the crash.

In fact, no aircraft crash has been authoritatively traced to such "latching." Dr. James S. Sumpter, whose Affidavit is attached, has never heard of such a case. TexPirg has never heard of such a case. And the scientific literature and the NRC, so far as can be determined, have never acknowledged such a case. Only Mr. Webb raises the issue, and he relies on an irrelevant newspaper article and

the views of an unidentified "Grumman aerospace official" who "speculated" about the possibility of "latching." Webb at 195. To say that this fails to prove the existence of "latching" is to state the obvious. Speculation is no substitute for facts in either science or law.

Ions may, in theory, be attracted onto circuits with a complementary electrical charge. Yet is it clear that guidance circuits on aircraft perform reliably in the presence of natural ionization at concentrations many times greater than those that might be produced by ACNGS emissions. Solar flares, for example, produce ion concentrations extraordinarily higher than those that can be expected from ACNGS, which will be limited by NRC regulations to relatively small atmospheric radiological releases that will raise background levels only slightly, even at plant boundaries. When the effects of dispersion at air travel altitudes and decay with time are considered together with the brief exposure of an aircraft passing near ACNGS, ionization from ACNGS emissions will have only a negligible effect, if any, on the ion exposure of passing aircraft.

III. Conclusion

Since there is no genuine issue of material fact to be litigated on this issue, Applicant is entitled to summary disposition as a matter of law.

Respectfully submitted,

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