

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) )

Docket No. 50-466

APPLICANT'S MOTION TO SET  
A SCHEDULE FOR COMMENCING  
EVIDENTIARY HEARINGS

On July 18, 1980, the Staff addressed a letter to the Licensing Board concerning a meeting among the Staff, Applicant and several of the intervenors held on July 10, to discuss a schedule for the completion of prehearing procedures and the commencement of evidentiary hearings. In its letter, the Staff set forth a proposed schedule based upon discussions with the Applicant, and modified to reflect concerns raised by the intervenors at the July 10, meeting. The Staff also proposed that the Board hold a Prehearing Conference to discuss the proposed schedule. The Board's "Order Scheduling Prehearing Conference" dated July 22, adopted the Staff's latter proposal and set a Conference date of August 13, 1980, in order to consider: (1) setting due dates for the responses to motions for summary disposition; (2) establishing dates for the filing of testimony

and commencement of the first phase of the evidentiary hearing; (3) simplifying the many contentions admitted as issues in this proceeding.

Applicant hereby moves the Board to issue a prehearing conference order adopting the schedule recommended by the Staff. Applicant sets forth below, the reasons why the Staff's proposed schedule is fair to all the parties and should be adopted by the Board. Applicant files this motion at this time to allow the Board to fully consider the merits of the proposed schedule in advance of the Prehearing Conference so that its ruling can be made at the Conference. Such a prompt ruling will give all parties the maximum possible time to prepare testimony and respond to motions for summary disposition.

Intervenors Doherty, Baker and Marrack have separately filed either a letter or motion arguing that the Staff's proposed schedule should not be adopted. TexPirg, although it has not submitted a written statement of its position, indicated clearly at the July 10, meeting, that it was strongly opposed to the Staff's proposal. Applicant contends that if the Board considers the burden imposed on each of these parties by the proposed schedule, it is quite clear that none of them has cause to complain. In fact, as discussed below, the schedule set forth in the Staff's recent letter to the Board reflects precisely the separate

interests, positions and burdens imposed on each party.

Intervenor Doherty

In a motion dated July 14, 1980, intervenor John Doherty argues that it will take him until January, 1981 to respond to motions for summary disposition. While Staff and Applicant have filed a number of motions for summary disposition on intervenor Doherty's contentions, all of this intervenor's contentions raise safety issues which would not be heard until sometime in 1981 under the Staff's schedule. Therefore, he will not be required to prepare any testimony for the first phase of hearings during the period in which he will be responding to motions for summary disposition, nor for a significant time thereafter. Moreover, Applicant and Staff have substantially reduced the number of Mr. Doherty's contentions as to which motions for summary disposition have been filed. Instead of filing motions for summary disposition on 33 of his contentions as originally intended, Staff and Applicant have filed motions on only 14. Thus, the burden on Mr. Doherty in responding to summary disposition motions has been substantially reduced. Even by his own conservative count, Mr. Doherty could complete all of his responses before the date suggested by Staff for filing his responses and well before the proposed commencement of hearings.\*

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\*/ Mr. Doherty claims it will take 5 days to prepare a response to each motion for summary disposition. Computing 5 days

His concern that he will not be able to attend the environmental hearings is therefore alleviated.

Intervenor TexPirg

Intervenor TexPirg has, under the proposed schedule, several environmental contentions to be litigated early in the proceeding as well as a few safety contentions on which Staff and Applicant have filed motions for summary disposition. For the reasons set forth below, the burden placed on TexPirg is not unreasonable.

First, Applicant and Staff have filed motions for summary disposition on only five (5) of TexPirg's contentions. A period of approximately 60 days to respond to 5 motions for summary disposition does not, in Applicant's view, constitute such a heavy burden on TexPirg as to require an adjustment to the hearing schedule.\*\*/ Second, all of the five

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[Footnote continued from previous page.]

per contention, times 14 contentions, gives 70 days total to respond. Beginning on July 18, the date on which Mr. Doherty was served notice of which of his contentions would be subject to motions for summary disposition, and counting forward 70 days, Mr. Doherty should have completed his responses before the October 1, date proposed by the Staff, and well before the October 20, hearing date. By October 1, Mr. Doherty will have had Applicant's motions in hand for 57 days.

\*\*/ The Commission's regulations permit only 20 days for the filing of responses to motions for summary disposition. 10 CFR §2.749.

contentions which are the subject of Staff and Applicant motions for summary disposition are safety contentions. Presumably, the experts upon whom TexPirg will rely to file responses on these technical safety issues will not be the same persons as those who will prepare testimony on its entirely unrelated environmental contentions. Of course, if TexPirg does not intend to file affirmative testimony on most or all of its environmental contentions, its burden will be very small indeed.

Finally, TexPirg's environmental contentions that are proposed for early hearing sessions are among the first filed by that party almost two years ago. Accordingly, TexPirg has had a substantial amount of time to begin preparation for the trial of these issues.

Intervenor Baker

In a letter dated July 16, 1980, intervenor Baker makes two arguments regarding the effect of the Staff's proposals on the financial qualifications intervenors.\* / Intervenor

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\* / Mr. Baker also argues that the proposed schedule imposes an unfair burden on some other parties; a matter not of concern to him and which has, in any case, been addressed above. In addition, he complains that he was not consulted by Staff and Applicant before they adopted and



first argues that the September 15 date recommended in the schedule for a prehearing conference is too tight. Applicant cannot understand the intervenor's concern since the proposed schedule for hearing environmental issues, which runs through early 1981, does not set forth any date for the financial qualifications contention. Since the schedule does not anticipate litigating his concerns in the first phase of hearings, no burden whatsoever has been placed upon this party. Mr. Baker will have ample time to review and digest all of the material mentioned in his letter before the relevant hearings begin.

Intervenor Baker also argues "strenuously" about "the way in which Staff and Applicant handled the rewriting of contentions." At the July 10, meeting, Mr. Baker expressed concern that as he understood the proposed rewording of his financial qualifications contention, it did not include the allegation that Applicant has not and will not obtain adequate rate relief from the Texas P.U.C., and that he might therefore be precluded from litigating this question. This matter was subsequently included in the Staff's reworded contention, and the argument is therefore moot.

Intervenor Marrack

Finally, intervenor Marrack has argued, in a motion dated July 23, 1980, that evidentiary hearings should not commence until April, 1981. Dr. Marrack offers no justifi-

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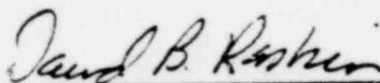
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presented a proposed schedule. The Board has already ruled on this issue in its July 29, 1980 Order, p.2 n.1.

cation for this extended delay, and in fact, his proposal has no justification. This intervenor has two (2) contentions admitted into this proceeding. It is entirely unreasonable for him to expect the amount of time he has requested to prepare testimony on them.

In Applicant's view, the schedule proposed by the Staff does not impose an unreasonable burden on any party, including those who have filed no protest. It has now been over 18 months since the first group of intervenors was admitted by this Board. The time has arrived, finally, to consider the merits of the numerous factual issues raised by the intervenors in this proceeding. Accordingly, Applicant requests the Board to adopt, at the upcoming Prehearing Conference, the schedule proposed by the Staff and begin evidentiary hearings in October, 1980.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing:

APPLICANT'S MOTION TO SET A SCHEDULE FOR  
COMMENCING EVIDENTIARY HEARINGS

was served upon the following persons, by hand \*, or by  
deposit in the United States Mail, first class postage prepaid,  
this 7th day of August, 1980.

  
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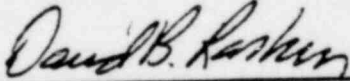
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicant's letter of August 22, 1980, to the Chairman, ASLB Panel, in the above-captioned proceeding were served on the following by deposit in the United States mail, postage pre-paid, or by hand-delivery this 22nd day of August, 1980.

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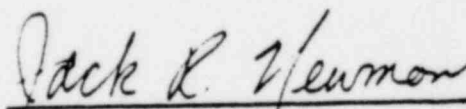
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