

August 27, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
HOUSTON LIGHTING & POWER COMPANY	)	Docket No. 50-466
	)	
(Allens Creek Nuclear Generating	)	
Station, Unit 1)	)	

NRC STAFF'S MOTIONS TO STRIKE CERTAIN PORTIONS OF PROPOSED  
EMERGENCY PLANNING CONTENTION AND FOR  
RECONSIDERATION OF TIME PERIOD FOR DISCOVERY

I.

INTRODUCTION

At the prehearing conference held in Houston on August 13, 1980, Mr. Schuessler, an Intervenor in the captioned proceeding, distributed a proposed emergency planning contention on behalf of himself, TEXPIRG and Mr. Doggett. That proposed contention was submitted pursuant to this Board's Order of July 24, 1980, and the Staff and Applicant were given leave to respond and/or file a motion to strike. (Tr. 1717, 1731-1736). For the reasons discussed below, the Staff objects to and moves to strike portions of the proposed wording of the contention, because much of it is either beyond the scope of the Board's July 24 Order or beyond the scope of the new emergency planning regulations. In addition, as explained below, the Staff moves for reconsideration of the date set by the Board in the July 24 Order for completion of discovery regarding emergency planning.

II.

DISCUSSION

The July 24 Order specifically provided that the litigation of the emergency planning issue in this proceeding was to be governed by Section II (The Preliminary Safety Analysis Report) of Appendix E to 10 C.F.R. Part 50, as amended. (Order, p. 2). The final version of that amended rule was published on August 19, 1980 (45 Fed. Reg. 55402, 55411).

It is clear that Mr. Schuessler, et al. have expanded the scope of the proposed issue far beyond the issue of emergency planning; they have converted the contention into one which attempts to place in issue Part 100 site suitability questions. They allege that:

ACNGS fails to adequately meet requirements of 10 C.F.R. Part 100, regarding siting, for reasons which include, but are not limited to, the following: (a) Applicant fails to adequately recognize that metropolitan Houston is the fastest-growing area in the U.S., steadily and rapidly expanding toward the site of ACNGS; (b) The proposed site of ACNGS is not presently sufficiently remote, and will become even less so during its operating life; (c) Traffic congestion at present and for the foreseeable future prevents any effective, timely emergency evacuation of the greater Houston area, or any substantial part thereof; (d) The State of Texas has no tested and approved evacuation plan for nuclear emergencies; (e) The distance from ACNGS to population center should be much greater than  $1 \frac{1}{3} \times$  LPZ because of special circumstances cited above.

They also assert that:

The PSAR and the selection of the proposed site do not properly consider population density, land use, physical characteristics (possible radioactive contamination of Brazos River water), thereby failing to adequately insure low risk of public exposure as required by 10 C.F.R. Part 100.10.

These site suitability allegations fall outside the scope of the July 24 Order, since they do not focus on the adequacy of the preliminary emergency plans for the Allens Creek facility pursuant to 10 C.F.R. Part 50, Appendix E, but contest whether the reactor should be constructed at this site at all.<sup>1/</sup> The Staff therefore objects to the inclusion of general site suitability questions in the proposed contention and urges the Board to strike this language (third and fifth paragraphs of the contention) from the proffered issue.

Second, the Staff objects to the proposed second paragraph of the contention, which reads as follows:

Applicant fails to demonstrate any capability of safely evacuating the Houston area in the event of an ACNGS accident of any magnitude up to and including Class 9.

In the referenced paragraph, Mr. Schuessler, et al. assert that the Applicant must develop plans for evacuating Houston in the event of an onsite accident at Allens Creek. That assertion goes well beyond the requirements of Appendix E to 10 C.F.R. Part 50, as amended, which requires that evacuation plans be developed for an "Emergency Planning Zone" with an approximate radius of 10 miles.<sup>2/</sup> Therefore, the Intervenor's proposal for an evacuation plan which would cover a 45-50 mile radius constitutes a direct challenge to

<sup>1/</sup> That question has been placed in controversy by other intervenors in this proceeding. See, e.g., Bishop Contention 1.

<sup>2/</sup> See "Introduction" to 10 C.F.R. Part 50, Appendix E fn. 2 and Section II (Preliminary Safety Analysis Report); Paragraph G. In the Statement of Considerations published with the final rule on August 19, 1980, the Commission stated that:

These distances are considered large enough to provide a response base that would support actively outside the planning zone should this ever be needed.

10 C.F.R. Part 50, Appendix E which is prohibited absent a showing, not made here, of special circumstances pursuant to 10 C.F.R. §2.758. Thus, this portion of the proposed contention should also be stricken.

Third, together with the reference to compliance with Part 100, the references to the Applicant's Environmental Report and the Staff's FES should be stricken from the first paragraph of the contention, since no analysis of emergency planning is required to be included in either of these documents by Appendix E to 10 C.F.R. Part 50 or any other regulation.<sup>3/</sup>

Finally, the Staff moves the Board to reconsider its ruling in the July 24 Order that discovery with regard to emergency planning be concluded by September 5, 1980. The discovery period should be extended because effective use of discovery must abide the Board's ruling with regard to the Staff's objections to the proposed contention. Only when the Board rules on these objections will the parties know the scope of the admitted issue. Since the Board ruling will not be issued until just prior to September 5 (at best), fairness dictates that the parties should be afforded a reasonable period of time subsequent to the Board's ruling within which to complete discovery. Therefore, the Staff requests that the Board extend the discovery period for 30 days, until October 5, 1980.

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<sup>3/</sup> Further, since Appendix E establishes requirements for the PSAR only, the reference to the Staff's SER should also be deleted.

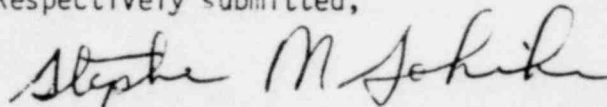
III.

CONCLUSION

For the above reasons, the Staff believes that the indicated portion of the first paragraph, together with the second, third and fifth paragraphs of the proposed contention should be stricked by this Board, and that the contention should be admitted in the following form, retaining only the allegations of the fourth paragraph:

The Applicant's PSAR fails to comply with the provisions of 10 C.F.R. Part 50, Appendix E, Section II, as amended in that it fails to assure the compatibility of emergency plans with site location, access routes, population distribution and land use. 4/

Respectively submitted,



Stephen M. Sohinki  
Counsel for NRC Staff

Dated at Bethesda, Maryland,  
this 27th day of August, 1980.

4/ The Staff's proposed extension of the discovery period is particularly necessary because the intervenors' allegations concerning compliance with Appendix E, Section II (in the fourth paragraph of the contention) are stated in the most general of terms. The basis of these allegations will have to be thoroughly explored in discovery.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S MOTIONS TO STRIKE CERTAIN PORTIONS OF PROPOSED EMERGENCY PLANNING CONTENTION AND FOR RECONSIDERATION OF TIME PERIOD FOR DISCOVERY" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or as indicated by an asterisk by deposit in the Nuclear Regulatory Commission internal mail system, this 27th day of August, 1980:

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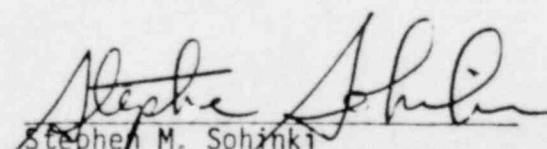
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