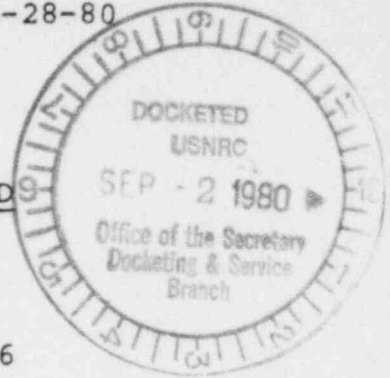


8-28-80

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



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

APPLICANT'S RESPONSE TO THE REWORDED EMERGENCY PLANNING
CONTENTION SUBMITTED BY INTERVENORS
SCHUESSLER, DOGGETT AND TEXPIRG

Houston Lighting & Power Company (Applicant) files this response to the reworded emergency planning contention submitted on August 13, 1980, by intervenor William Schuessler as lead party on behalf of himself and intervenors Steven Doggett and TexPirg. The contention submitted does not present a litigable issue for the following reasons: (1) the contention does not comply with the Board's Order dated July 24, 1980; and (2) the contention constitutes a challenge to the Commission's final emergency planning regulations (45 Fed Reg 55402, August 19, 1980) without a showing of special circumstances as required by 10 CFR § 2.758.

Although the contention as submitted is inadmissible, Applicant believes that a portion of the contention is proper under the Commission's regulations for hearing in this proceeding. For reasons set forth below, Applicant therefore urges the Board to admit the following portion of the reworded contention:

The PSAR fails to meet the requirements of 10 CFR Part 50, Appendix E, II, in that it fails to assure the compatibility of emergency plans with site location, access routes, population distribution and land use.

I. Background:

On March 10, 1980, the Board issued an Order ruling on the admissibility of contentions filed pursuant to its Supplementary Notice of Intervention Procedures (44 Fed Reg 35062, June 12, 1979). The Board deferred ruling on five contentions challenging the adequacy of the Applicant's emergency response capability, pending completion of the Commission's rulemaking on emergency planning. (March 10, Order pp. 34-36, 42, 80-81 and 96). These contentions were: TexPirg 16(d)(e)(f)(i) and 42; Doggett 5; and Schuessler 6 and 14.

All five of these contentions essentially challenged the Applicant's ability to take adequate emergency protective measures in the event of an accident because of the proximity of the ACNGS site to the Houston metropolitan area. Noting that the Commission was modifying its regulations on emergency planning, the Board provided that "[a]fter the issuance of the Commission's final rule, we will either rule upon admissibility or permit" the parties to amend their contentions. (March Order 10, Order p. 36)

Four months later, the Commission had not yet issued its final regulations. In an attempt to resolve this outstanding intervention issue and allow the proceeding to move into the hearing phase, the Board issued an Order on July 24, 1980, admitting an unspecified emergency planning contention and requesting the affected parties to submit a reworded contention for purposes of litigating this issue. The Board further directed that:

Absent the Commission's final rule, the litigation of this issue, and preparation therefor, are to be guided by Section II -- The Preliminary Safety Analysis Report -- of the proposed rule. See 44 Fed Reg 75167, 75172. Should the final rule be issued prior to the beginning of the litigation of this matter, the lead party shall be given an opportunity to amend the consolidated contention.

(July 24, Order, p. 2)

At the prehearing conference held in Houston on August 13, 1980, Mr. Schuessler submitted a written statement to the Board declaring that he would be the lead party for purposes of litigating the emergency planning issue, and submitted the following language for the consolidated contention:

- I. Applicant's Environmental Report and PSAR, and NRC's FES and SER, in regard to emergency planning, fail to comply with provisions of 10 CFR Part 50, Appendix E, and 10 CFR Part 100 as (to be) amended.
- II. 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.
- III. ACNGS fails to adequately meet requirements of 10 CFR 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 $1 \frac{1}{3} \times \text{LPZ}$ because of special circumstances cited above.
- IV. The PSAR fails to meet requirements of 10 CFR Part 50, Appendix E, II, in that it fails to assure the compatibility of emergency plans with site location, access routes, population distribution and land use.
- V. 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 CFR Part 100.10.

VI. The Board should deny Applicant a construction permit until these requirements are met, and Intervenors contend that these requirements cannot be met at this proposed site.*/

Almost simultaneously with the August 13 prehearing conference, the Commission issued the final amendments to its emergency planning regulations for publication in the Federal Register. (45 Fed Reg 55402, August 19, 1980.) Applicant notified the Licensing Board at the prehearing conference that, in light of the final rule, it intended to file objections to the reworded contention submitted by Mr. Schuessler; the Staff indicated that it would also file objections. (Tr. 1734-36; See ASLB Order of August 21, 1980, p. 6.)

II. The Reworded Emergency Planning Contention Does Not Comply With The Board's July 24, Order

The Board's July 24, Order sought to resolve this outstanding intervention issue even though it did not have a final regulation against which the contention could be measured. As Applicant interpreted this Order, the Intervenors who had earlier filed emergency planning contentions were required to file a reworded contention addressing their particular concerns in light of relevant provisions in the Commission's proposed emergency planning regulations published in the Federal Register on December 19, 1979. The only

*/ Applicant has numbered each of the paragraphs in the contention, I-VI, for ease of reference in this response.

portion of the proposed (and final) rule which is directed to applicants for construction permits is, as the Board noted, Section II of Appendix E.

The intervenors did not, as ordered, reformulate their concerns to fit the requirements of the Commission's regulations. Instead, they resubmitted a contention which is, in effect, an amalgamation of all the concerns addressed in their earlier contentions. As discussed below, this contention raises issues beyond the scope of both the proposed and final emergency planning regulations and therefore violates the Board's July 24, Order.

Furthermore, several parts of the reworded contention that were in the intervenors' original contentions, attempt to raise issues of site suitability under part 100 which are not relevant to emergency planning and therefore not within the ambit of the Board's July 24, Order.^{*/} For these additional reasons, these parts of the contention should be rejected by the Board.

^{*/} Paragraphs I, III and V all expressly state that Applicant does not comply with Part 100 of the Commission's regulations. The allegations in Paragraph's I and V are merely bald and unsupported assertions of noncompliance. The allegations in Paragraph III are, with but one exception, not within the scope of any provision in part 100. Paragraph III(e) discusses the population center distance requirement found in 10 CFR § 100.11. However, it has already been determined in the PID that no special circumstances exist which would warrant modifying the minimum population center distance as contended. (2 NRC 776, ¶81)

III. Portions of the Reworded Contention Challenge The Commission's Regulations Without A Showing Of Special Circumstances As Required By 10 CFR § 2.758.

Under the Commission's final emergency planning regulations, Applicants for an operating license will be required to submit detailed emergency response plans of State and local governments within a 10-mile plume exposure emergency planning zone (EPZ) and a 50-mile ingestion exposure EPZ. Evacuation plans are required only for the 10-mile plume exposure EPZ; planning within the 50-mile ingestion exposure zone will consist of measures to prevent radioactive material from entering the food chain. The policy to expand protection against direct exposure to the radioactive plume out to a distance of 10 miles is an integral part of the Commission's "decision to have a conservative emergency planning policy..." (45 Fed Reg at 55406) and is based on a substantial record (See, e.g., Commission Policy Statement at 44 Fed Reg 61123, October 23, 1979).

Paragraphs II, and III (a)(b) and (c) of the reworded contention allege that Applicant must demonstrate the capability to evacuate the entire Houston metropolitan area; a distance far greater than 10 miles from the ACNGS. For that reason, these portions of the reworded contention are beyond the scope of the Commission's regulations and represent a challenge to them. Intervenors have made no showing of special circumstances,

as required by 10 CFR § 2.758, which would justify expanding evacuation planning far beyond that required by the final regulations. Therefore, these portions of the reworded contention should be excised as improper for litigation in this proceeding.

Paragraph III (d) of the reworded contention argues that "The State of Texas has no tested and approved evacuation plan for nuclear emergencies." This allegation is also beyond the scope of the Commission's regulations and therefore inadmissible. The new regulations require that applicants for an operating license submit detailed State and local emergency plans. (45 Fed. Reg. at 55408). No operating license will be issued unless the Commission finds that such plans provide "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." (Id. at 55409). Applicants for a construction permit are required only "to include in the preliminary safety analysis report a discussion of preliminary plans for coping with emergencies." (Id. at 55411). No State and local emergency plans need be finalized and submitted to the NRC at the construction permit stage. Intervenors have neither made nor attempted any showing of "special circumstances" pursuant to 10 CFR §2.758; accordingly, this portion of the contention should also be rejected by the Board.

IV. The Remainder of The Reworded Contention Falls Within The Scope Of The Commission's Final Emergency Planning Regulations

The remaining portion (Paragraph IV) of the reworded contention does not suffer from the same infirmities discussed above. ^{*/} Intervenor there argue that the Applicant cannot ensure the compatibility of emergency plans with site location, access routes, population distribution and land use. The language used is taken directly from Appendix E, Section II of Part 50. Applicant believes that Paragraph IV comprises the only litigable portion of the contention submitted by the intervenors. The Board should therefore admit this paragraph as the emergency planning contention to be litigated in this proceeding.

V. Conclusion:

For all of the foregoing reasons, Applicant urges the Board to admit only that portion of the reworded contention (Paragraph IV) submitted on August 13, 1980 which falls within the scope of the Commission's final emergency planning regulations, and to reject all of the remaining portions of the contention.

^{*/} Paragraphs I and VI are merely an introduction and conclusory prayer for relief. Neither attempts to set forth an emergency planning issue for litigation in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Response to the Reworded Emergency Planning Contention Submitted by Intervenors Schuessler, Doggett and TexPirg were served on the following by deposit in the United States mail, postage prepaid, or by hand delivery this 28th day of August, 1980:

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