

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

Sheldon J. Wolfe, Esquire, Chairman
Dr. E. Leonard Cheatam, Member
Gustave A. Linenberger, Jr., Member



In the Matter of)
HOUSTON LIGHTING AND POWER COMPANY)
(Allens Creek Nuclear Generating Station,)
Unit 1))

Docket No. 50-466 CP

ORDER
(October 1, 1980)

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1. On September 15, 1980, Intervenor John Doherty filed a Motion For Additional Time To Answer Applicant's and Staff's Motions For Summary Disposition. Therein, Mr. Doherty requests a forty-four (44) day extension of time from October 2 to November 15, 1980 within which to file his replies to Applicant's and Staff's motions for summary disposition which had been filed respectively on August 4 and August 8, 1980.

In its Response of September 25, 1980, the Staff states there is some merit to several of Mr. Doherty's asserted justifications in support of his motion, but suggests that time be extended only to October 23, 1980. In its Response of September 25th, the Applicant urges that the instant motion be denied since Mr. Doherty failed to establish good cause and to evidence clearly the reasons for requesting a forty-four day extension.

We note that between August 14^{1/} and September 22, 1980 (thirty-nine days), Mr. Doherty has filed seven replies to fifteen motions for summary

1/ During the prehearing conference on August 13, 1980, the Board directed that affected Intervenor would have between August 14 and October 2, 1980 within which to reply to Applicant's and Staff's motions for summary disposition (See Order of August 21, 1980).

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disposition. Thus, within that time period, he has filed on average a reply every five-and-one-half days. This average comports with the five day period Mr. Doherty earlier had stated he would need to prepare each reply. (Doherty Motion For Scheduling the Prehearing Conference filed on July 14, 1980). Further, we note that Staff acknowledges that, as of September 25th, several responses to Mr. Doherty's interrogatories remained outstanding, that those responses would be filed within the week, and that accordingly it would not object to the time being extended to October 23, 1980. Moreover, while it appears from an attachment to Applicant's response that Mr. Doherty has not timely availed himself of the opportunity to review documents in Applicant's down-town office which had been referenced in Applicant's motions for summary disposition, it is clear, as is evidenced by another attachment to Applicant's response, that as of September 11, 1980, certain parts of the "Reed Report" have not been produced for Mr. Doherty's review. Applicant's letter to Mr. Doherty dated September 23, 1980 also clearly reflects that although Mr. Doherty had requested on September 2 to inspect certain parts of the "Reed Report", these parts were not made available until September 23rd.

We agree with the Staff that, inasmuch as the evidentiary hearing on environmental issues only will begin either on December 1, 1980 or in the second week of January, 1981,^{2/} our granting of an extension of time for the filing of Mr. Doherty's replies to motions seeking summary disposition of certain of his health and safety contentions will not delay the commencement of the first phase of the hearing. We also agree with Staff that the number of days granted should be limited in order that the Board, prior to the second phase of the hearing,

2/ The Board, within a few days, will issue an order which, inter alia, will fix the commencement date of the hearing.

will have adequate time, in this exceedingly complex case, to review and adjudge the motions for summary disposition and replies directed to health and safety contentions.

Accordingly, we grant the instant motion in part and deny it in part. Mr. Doherty shall have until November 4, 1980, within which to serve the remainder of his replies to Applicant's and Staff's motions for summary disposition. In order to assist the Board in its timely review, he shall serve each reply when completed. No further extensions of time will be granted to Mr. Doherty.

2. On September 12, 1980, within its Motion For Summary Disposition of #43 (AC8), TexPirg requested an extension of time to file motions for summary disposition.^{3/} Despite "heroic" efforts and because of the unavailability of several of its assistants, TexPirg asserts that it is unable to file several more motions for summary disposition by the due date of September 12, 1980.^{4/} In responses of September 25, 1980, Applicant and Staff oppose the granting of the instant motion.

We note that TexPirg fails to specify the number of days of extension requested. We could not and will not grant such a request for an open-ended

3/ On August 6, on September 12, and, in an undated submission received on September 16, 1980, TexPirg moved for summary disposition with respect to three of its contentions.

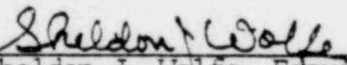
4/ In passing, we note TexPirg objects to our ruling during the prehearing conference on August 13, 1980 that intervening parties must file motions for summary disposition, if any, on or before September 12, 1980, because the Board made no showing of good cause for "shortening" [sic] the forty-five day period prior to a hearing for the filing of motions for summary disposition. In the first place, TexPirg's attorney inexcusably was not in attendance when the Board was considering and ruling upon the September 12th due date. Further, contrary to § 2.752(c) TexPirg did not file such an objection within five days after the service of the Board's Order of August 21, 1980 which memorialized

extension of time because, to allow it, would be to indefinitely delay the ultimate decision in this case. Further, the motion is defective in that TexPirg fails to notify the Board exactly how many more motions for summary disposition it intends to file after September 12th and thus does not assist the Board in determining the number of days that the due date should be extended.

In fairness to TexPirg, however, we grant in part and deny in part the instant motion. TexPirg shall have until October 8, 1980 within which to file motions for summary disposition. TexPirg will telephone Mr. Copeland, who will arrange to secure a copy of the motion(s) and expedite delivery to Staff's counsel. Applicant and/or Staff shall respond within twenty days after receipt of TexPirg's motion(s) and hand-deliver copies of these responses to the Board. No further extensions of time will be granted to TexPirg.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Sheldon J. Wolfe, Esquire
Chairman

Dated at Bethesda, Maryland
this 1st day of October, 1980.

Footnote 4 (Continued):

said ruling. In any event, the mammoth record in this case and the numerous contentions clearly reflect the absolute necessity for the Board to have adequate time to carefully review and rule upon such motions in sufficient time prior to the first (environmental) and prior to the second (health and safety) phases of this hearing.