

10/02/80

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 RESPONSE IN OPPOSITION TO TEXPIRG MOTION  
FOR SUMMARY DISPOSITION OF CONTENTION AC 8

A. Introduction

On September 12, 1980, TEXPIRG filed a motion seeking summary disposition of its contention AC 8 pursuant to the provisions of 10 C.F.R. § 2.749. The subject contention basically asserts that natural gas plants are a feasible and environmentally superior alternative to the Allens Creek Nuclear Generating Station (ACNGS) and, therefore, is an obviously superior alternative to the proposed ACNGS. In support of its motion, TEXPIRG submitted the affidavit of Clarence Johnson, a former Executive Director of TEXPIRG and the individual primarily responsible for the research of this contention. The affidavit basically concludes that a natural gas generation facility is environmentally preferable to a nuclear facility in terms of water use, land consumption, environmental impacts of the fuel cycle, atmospheric releases, and decommissioning. Johnson Affidavit, pp. 1-4. The affidavit also concludes that

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a natural gas facility is economically preferable to nuclear generation. Mr. Johnson calculates that the present discounted value per unit of electricity is lower for natural gas (19.7 mills/kwh) than for nuclear generation (24.96 mills/kwh) over a 25-year lifetime. Johnson Affidavit, pp. 4-6. Finally, the affidavit concludes that natural gas generation is a feasible alternative because (1) existing natural gas facilities which are required to be retired by 1990 under the mandates of the Powerplant and Industrial Fuel Use Act of 1978, could be extended for ten to fifteen years, or (2) the Act could be amended to allow the construction of new natural gas facilities because sufficient natural gas reserves appear to exist. Johnson Affidavit, pp. 6-9.

For the reasons set forth in the Johnson Affidavit, TEXPIRG concludes that natural gas generation of electrical power is an obviously superior alternative to the proposed ACNGS and, therefore, summary disposition should be granted with respect to this contention. The NRC Staff submits that this motion for summary disposition should be denied for the legal and substantive reasons set forth below.

B. Legal Standards for Summary Disposition

The Commission's Rules of Practice provide for summary disposition of certain issues on the pleadings where the filings in the proceeding show that there is no genuine issue as to any material fact and that the movant is entitled to a decision as a matter of law. 10 C.F.R. § 2.749(d). It is established

that the Commission's summary disposition rule, 10 C.F.R. § 2.749, is analogous to the judicial counterpart in Rule 56 of the Federal Rule of Civil Procedure. Alabama Power Company (Joseph M. Farley, Units 1 and 2), ALAB-182, 7 AEC 210, 217 (1974). Accordingly, federal authorities under Rule 56 may be relied upon. In Cleveland Electric Illuminating Company (Perry, Units 1 and 2), ALAB-433, 6 NRC 741, 752-54 (1977), the Appeal Board pointed out that it is the party seeking summary judgment, not the party opposing it, who must demonstrate the absence of any genuine issue of material fact. Citing Adickes v. Kress & Co., 398 U.S. 144, 157 (1970). To meet this burden, the movant must eliminate any real doubt as to the existence of any genuine issue of material fact. Peller v. Columbia Broadcasting Co., 368 U.S. 464, 468 (1962); Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 627 (1944). The record and affidavits supporting and opposing the motion must be viewed in the light most favorable to the party opposing the motion. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), LBP-74-36, 7 AEC 877 (1974) and cases cited herein at pp. 878-79. The opposing party need not show that he would prevail on the issues but only that there are genuine issues to be tried. American Manufacturers Mut. Ins. Co. v. American Broadcasting-Paramount Theaters, Inc., 388 F.2d 272, 280 (2d Cir. 1976).

The NRC Staff submits that TEXPIRG has not met this burden of demonstrating the absence of any genuine issue of material fact with respect to this contention for several reasons. First, TEXPIRG's claim that the Powerplant and Industrial Fuel Use Act of 1978 could be altered or amended to permit

existing natural gas facilities to continue operation past 1990 or to allow construction of new natural gas facilities is speculative and, indeed, unfounded. Second, as the attached affidavits of J. W. Dick and Jack O. Roberts and Calvin W. Moon indicate, it is not certain a genuine issue of material fact remains as to whether a natural gas generating facility is economically preferable to ACNGS. These reasons will be discussed in detail below.

C. Powerplant and Industrial Fuel Use Act of 1978

The Powerplant and Industrial Fuel Use Act of 1978, Pub. L. No. 95-620, 92 Stat. 3289 (1978) was adopted to basically reduce foreign oil importation and to conserve natural gas and petroleum for uses, other than electric utility or other industrial or commercial generation of steam or electricity, for which there are no feasible alternative fuels or raw material substitutes. See Sec. 102(b) of the Act. Thus, to further the above purpose, the Act prohibited the use of natural gas or petroleum as a primary energy source in any new electric power plant with certain exceptions. Sec. 201. Temporary exemptions may be granted due to lack of an alternative fuel supply, site limitations, environmental requirements, or public interest considerations but, in any event, temporary exemptions cannot exceed 10 years duration. Sec. 211. Permanent exemptions may also be granted due to lack of alternative fuel supply, site limitations, environmental requirements or because adequate financing cannot be obtained for the alternate fuel or coal power plant. Sec. 212. The Act also prohibits existing electric power plants

from using natural gas as their primary energy source after January 1, 1990. Sec. 301. Temporary exceptions (up to five years) and permanent exemptions are provided after 1990 for reasons similar to those which would exempt new facilities from compliance. Secs. 311 and 312.

As can be discerned from the provisions and stated purpose of the Act, the national energy policy as mandated by Congress is to conserve natural gas and petroleum for uses other than the generation of electricity through the prohibition of new generating facilities and the replacement of existing facilities which use such fuels. Although temporary exceptions and permanent exemptions may be permitted, they are limited in nature and require a finding from the Secretary of the Department of Energy that such exemption should be granted after an adequate demonstration of need is made by the petitioner. We thus submit that any exemptions from the prohibitions of this Act for new and existing natural gas generating facilities is, at the very least, speculative. We also believe that any exemption is legally impossible without an existing condition which would permit such an exemption under the Act. None of these conditions have been alleged to exist by TEXPIRG. In fact, TEXPIRG recognizes that construction of a new natural gas generating facility could only be accomplished by amending the Act. Johnson Affidavit, p. 8.

In conclusion, it is the Staff's opinion that this motion for summary disposition should be denied because TEXPIRG has not met its burden of demonstrating the absence of any genuine issue of material fact with respect to this contention. Based on the foregoing, we conclude that the prohibitions and

restrictions set forth in the Powerplant and Industrial Fuel Use Act of 1978 could present a factual and legal bar to the consideration of natural gas as an alternative fuel for the ACNGS. In light of the provisions of this Act, a genuine issue of material fact remains in the consideration of this contention.

D. Economic Feasibility of Natural Gas

The Johnson Affidavit sets forth an economic comparison of the costs of natural gas generation versus nuclear generation over a 25 year lifetime. His calculations indicate a constant dollar (1985 dollars) present discounted worth of 19.7 mills/kwh for natural gas generation and 24.96 mills/kwh for nuclear generation. Consequently, Mr. Johnson concludes that natural gas generation is economically feasible relative to nuclear generation because they are "not extremely different in overall costs, even in the longterm." Johnson Affidavit, p. 6.

The NRC Staff, however, disagrees with Mr. Johnson's calculations and his conclusions regarding the economic comparability of natural gas to nuclear generation. As the attached affidavit of Jack O. Roberts and Calvin W. Moon indicates, the Staff's preliminary comparison of these generation costs for equal capacity factors reveals that natural gas generation would be more than 50 percent costlier than nuclear generation. Even for a 40 percent capacity factor, nuclear generation would cost less than natural gas generation at a 70 percent capacity factor.

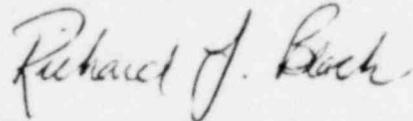
In addition, the attached affidavit of James W. Dick indicates that there does not appear to be a clear basis for support for some of the assumptions used in Mr. Johnson's economic comparative analysis. For instance, Mr. Dick believes the assumptions used for the average capacity factor for the proposed nuclear power plant (45%) and its construction cost escalation are unrealistic and not supported by available sources. Mr. Dick also believes that Mr. Johnson's analysis is sketchy and should be more explicitly developed if it is to be properly evaluated. Mr. Dick concludes that the provisions of the Powerplant and Industrial Fuel Use Act of 1978 and the uncertainty of future price and availability of natural gas makes the natural gas option seem unrealistic for baseload generation.

The NRC Staff submits that the foregoing facts indicate that TEXPIRG has not met its burden of demonstrating the absence of any genuine issue of material fact with respect to the economic feasibility of natural gas generation as an alternative to ACHGS. The Staff's preliminary assessment of the economic comparison between these fuels set forth in the Roberts-Moon Affidavit disputes TEXPIRG's assertion that the overall costs are "not extremely different." Furthermore, the Dick Affidavit demonstrates that several of the assumptions used in TEXPIRG's economic comparison are unrealistic and unfounded and, overall, the economic comparison is lacking in necessary details.

E. Conclusion

For the reasons set forth above, the NRC Staff submits that this motion for summary disposition of Additional Contention 8 should be denied because the elimination of any genuine issue of material fact has not been demonstrated.

Respectfully submitted,

A handwritten signature in cursive script that reads "Richard L. Black".

Richard L. Black  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 2nd day of October, 1980