

October 22, 1980

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 1)

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Docket No. 50-466

APPLICANT'S RESPONSE TO TEXPIRG'S MOTIONS FOR
SUMMARY DISPOSITION SERVED ON OCTOBER 9, 1980

On the afternoon of October 9, 1980, Applicant's counsel received a telephone call from Mr. Scott, TexPirg's counsel, who advised that a copy of TexPirg's further motions for summary disposition could be picked up at his home address. The motions were due on October 8.^{1/} Thus, for the second time, Mr. Scott failed to serve his motions for summary disposition within the time ordered by the Board.^{2/}

^{1/} See, ASLB Order, p. 4 (Oct. 1, 1980).

^{2/} TexPirg's first set of motions for summary disposition were served on the Applicant by mail rather than by hand delivery as ordered by the Board's Order of August 21, 1980, which appreciably reduced the time for response by Applicant and Staff. This is obviously what the Board intended to avoid by ordering hand delivery.

TexPirg's continued failure to comply with the time limits imposed by the Board is inexcusable, particularly when the deadline was extended upon TexPirg's own motion. The Board should dismiss the motions as untimely.

Aside from the issue of timeliness, the three page document submitted by TexPirg is a motion for summary disposition in title only. A motion for summary disposition must offer evidence establishing that there is no genuine issue in controversy. See Applicant's Memorandum Of Law In Support Of Responses To Intervenors' Motions For Summary Disposition," filed October 2, 1980, at pp. 2-3 (hereinafter "Applicant's Memorandum"). These pleadings are no more than a bare restatement of TexPirg's contentions, completely devoid of admissible evidence. The purely argumentative assertions in the four lists of "material facts" are patently insufficient as evidentiary support for summary disposition.^{3/} Applicant's Memorandum at 6.

^{3/} The last sentence of TexPirg's motion states that the "evidence is in the record of this proceeding and in the NRC's files." However, TexPirg has failed to specify where that evidence may be found. Neither the Board nor the Applicant have the burden to comb through all of the NRC's files in an attempt to devine the evidentiary basis for TexPirg's motion.

Because of their obvious insufficiency, TexPirg's motions need not be answered. It is firmly established in this agency's practice that:

Where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented.

Cleveland Electric Illuminating Company, et al. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 753-4 (1977), quoting Adickes v. Kress & Co., 398 U.S. 144, 159 (1970) (emphasis in original). It follows, perforce, that the complete absence of evidentiary support in the subject motions removes any burden of reply from Applicant and requires that the motions be denied.

As explained in Applicant's Memorandum, there are very clear legal standards that must be met in moving for summary disposition. The motions in question do not even constitute a good faith effort to comply with those standards. The motions are a particular affront to the Board, which not only granted TexPirg an extension until October 8 to file additional motions for summary disposition, but also cited this extension as one of the grounds for beginning the hearings in January, 1981.^{4/}

^{4/} See, ASLB Order, pp. 2-3 (Oct. 3, 1980).

As the Board is aware, the summary disposition process can be beneficial in a hearing such as this because it can eliminate many issues altogether or narrow issues that ultimately go to trial. TexPirg's motions do neither -- they simply burden the Applicant, the Staff and the Board with a frivolous filing that must be given a considered response.^{5/}

As stated above, Applicant has no legal obligation to reply to the substance of TexPirg's motions. However, a few comments on the merits of the motions illustrate that the motions are fallacious on their face and that there are issues remaining for trial on each contention:

TexPirg AC 1. Other than an unspecified reference to the "EIS, ER, Staff studies, and Interrogatory answers," TexPirg fails to provide any specific citation in support of its argument that the impacts of transporting the reactor vessel would be less at STP than at Aliens Creek. In replying to a prior motion for summary disposition with regard

^{5/} In addition to denying these motions, Applicant believes the Board should admonish TexPirg's counsel that the Commission's regulations permit the Board to take necessary action against counsel engaging in dilatory tactics. 10 C.F.R. §2.111(c)(4). As the commencement of the hearing approaches, the burden of all parties increases and there is little time to respond to frivolous pleadings.

to TexPirg Contention 1, Applicant filed the affidavit of Mr. James R. Hussey, which described the study by Dames & Moore on the impact of transporting the reactor to the site. The conclusion was that the impact would be insignificant. As to the legal points raised in TexPirg's motion, the simple answer is that the FES can be modified by the ASLB's initial decision. 10 CFR §51.52(b)(3).

TexPirg Contention Nos. 2 and 4. Paragraphs 1, 2 and 4 are nothing more than restatements of TexPirg's contention with even less information than is contained in the original statement of the contention. Paragraphs 4 and 5 stray well beyond the admitted contentions in this case and are thus clearly improper in a motion for summary disposition. Finally, no articulated bases are provided to support the statements in these paragraphs.

TexPirg Contention Nos. 5, 7, 8 and AC 12. Paragraph 1 deals with the need-for-power issues which are not admitted issues in this case. [See ASLB Orders of September 26 and November 7, 1979]. Paragraph 2 is totally undocumented and proves nothing even if it were true.^{6/} Paragraph

^{6/} The attached article from The Houston Post is apparently the source of this paragraph. If so, TexPirg obviously misread the article. The City of Houston project has nothing to do with the generation of electric power.

3 was addressed in Applicant's answer to TexPirg's prior motion for summary disposition on the natural gas alternative, including the affidavits of Dr. Guy and Mr. McGuire. Even if paragraph 4 were true, it proves nothing. Paragraph 5 is nothing more than a summarization of all of TexPirg's contentions and it is totally unsupported by any evidence. TexPirg must prevail at trial on every one of the issues in this grouping before any such conclusion can be drawn.

TexPirg Contention No. AC 31. TexPirg fails to establish the relevance of Paragraph 1 even if it is true. In addition, TexPirg has not established that there is any requirement as to the number of Doctors of Philosophy which Applicant must hire. As to paragraph 2, TexPirg has not established that there is any relationship between construction problems at STP and Applicant's technical capability to construct the Allens Creek project. Even assuming some such relationship, TexPirg has failed to demonstrate, or even allege, that there are no issues to be tried in this case relating to STP construction problems and their relevance to Applicant's technical qualifications to construct ACNGS. Paragraph 3, even if true, has no demonstrable relationship to the question of technical qualifications. Paragraph 4 is totally unsupported, and the Board has no obligation to

search all of the NRC's records and files to find the necessary support, as is implied by the last sentence of TexPirg's motion.

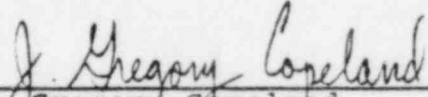
In sum, TexPirg's motion is untimely, is unsupported by any evidence and often strays beyond the bounds of TexPirg's admitted contentions. Accordingly, the motion must be denied.

Respectfully submitted,

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ATTORNEYS FOR APPLICANT
HOUSTON LIGHTING & POWER COMPANY

Waste steam plant bids to be taken, McConn says

By TOM KENNEDY
Post Reporter

Mayor Jim McConn said Monday city officials should be taking bids within the next four to six months for construction of a steam plant on the Houston Ship Channel that will be fueled by solid waste.

The mayor, who returned to Houston Sunday after spending nine days in Germany touring similar steam-producing plants, told an impromptu news conference at City Hall that a consortium which promised a multi-million-dollar plan for the plant had taken too long to present its proposals.

The group, which included the Gulf Coast Waste Disposal Authority (GCWDA), Brown and Root Inc. and Browning-Ferris Industries (BFI), outlined its plan to City Council about two years ago.

The plan involved transfer stations in the city's northwest and southwest quadrants where the consortium's trucks would pickup garbage and take it to the ship channel plant for conversion to steam that would be sold to ship channel industries.

The plan was to have solved the city's dire garbage pickup circumstances, cur-

rently complicated by having just one permitted landfill operation on the far northeast side.

"BFI waited too long to give us the proposals," McConn said. "We discovered many other people could give us reasonable bids so we are going to draw up specifications and go out for bids."

The mayor said he met with BFI officials in Frankfurt last Thursday to discuss the proposal and "informed them they have had over two years to get us their proposals. The comments made by the GCWDA were nice but they were not true."

He referred to the fact that spokesmen for the authority made the initial proposal to the council, claiming that it would save the city millions of dollars in garbage pickup costs.

While the consortium's hopes are over for the moment, McConn said, "We will try to proceed with a system that burns garbage rather than landfills it."

He said Public Works officials will work to draw up specifications for such a system and "optimistically" the city will go out for bids within four to six months. McConn said some steam plants in Europe generate enough steam from solid waste "to heat whole districts of a city."

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicant's Response to TexPirg's Motions for Summary Disposition Served on October 9, 1980 in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, or by hand-delivery this 22nd day of October, 1980.

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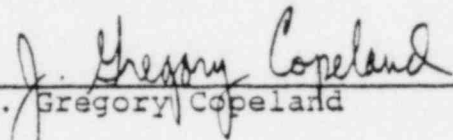
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