

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))

Docket No. 50-466

1981 FEB 18 AM 9 27

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NRC STAFF RESPONSE TO
INTERVENOR DOHERTY'S MOTION TO ADD CONTENTION 55

On January 26, Intervenor Doherty filed another document which seeks to add to his contentions in this proceeding one more contention (Contention 55).^{1/} Although the instant document filed by the Intervenor is not labeled as a motion to amend his petition for leave to intervene, the Staff will treat it as such a motion. As the Staff has noted with regard to the previous request for the addition of contentions^{2/} the instant contention is late and the Intervenor must accordingly amend his petition for leave to intervene addressing the following five factors:

1. Good cause, if any, for failure to file on time.
2. The availability of other means whereby the petitioner's interest will be protected.

^{1/} A document entitled "John F. Doherty's Contentions #51, 52, 53 and 54," was filed on January 15, 1981.

^{2/} See NRC document entitled "NRC Staff Response to Intervenor Doherty's Motion to Add Additional Contentions 51, 52, 53 and 54," filed January 30, 1981.

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3. The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
4. The extent to which the petitioner's interest will be represented by existing parties.
5. The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

Intervenor Doherty has not addressed these factors in his motion. Apparently, he has misconstrued the Licensing Board's observation (Tr. 1818) that the Draft Supplement No. 2 to the FES which was issued in December 1980 might generate additional or amended contentions. While it is correct to note that the issuance of Draft Supplement No. 2 to the FES could provide a basis for additional or amended contentions, the Board's observation was not meant to waive the requirements of 10 C.F.R. § 2.714(a)(3) with respect to amending the petition to intervene. Thus, the above factors must be assessed and balanced by the Licensing Board in the consideration of Contention 55. Although Doherty's motion did not address these factors, we believe that the Board can properly weigh these factors and rule on this motion after considering the relevancy and merits of Staff's position with respect to these factors as set forth below.

II. DISCUSSION

1. Good Cause For Late Filing

Good cause for filing additional contentions depends on whether "new" information becomes available to assess the project under review.

In this instance, the Staff issued Draft Supplement No. 2 to the Final Environmental Statement (Draft Supplement) in December 1980. Mr. Doherty bases his "right" to submit Contention 55 as an additional contention on issuance of that publication. Motion, p. 1. However, the mere publication of a new Staff document does not necessarily constitute the requisite good cause based on new information.^{3/} The data and the information presented in the Draft Supplement has been based on a review of a 1975 siting study conducted on behalf of HL&P.^{4/} This siting study has been docketed by the NRC and placed in the public document rooms. Thus, this siting study has been available to intervenors^{5/} and cannot be considered "new" information in a strict sense.

In another sense, the Staff's independent review and analysis of that siting study as reflected in the Draft Supplement could be considered to constitute new information. For example, the Draft Supplement is the first Staff document to compare the Je-3 site (which is the subject of Contention 55) as an alternative to the Allens Creek site. The Draft Supplement identifies the basis for the comparison (pp. 2-35

^{3/} If this were true, then Intervenors could automatically file new contentions based on Staff responses in the FES to agency comments pertaining to the DES. Whether "new" information exists depends obviously on the specific factual situation.

^{4/} Teknekron Energy Resources Analysts, Nuclear Power Plant Siting Study, December 1975.

^{5/} In fact, it has been requested by Intervenors through discovery procedures.

through 2-41) and the conclusion (pp. 2-57 through 2-59) that the Je-3 site is not obviously superior to Allens Creek and is new information not previously presented by the Staff.

The thrust of Contention 55, like Contention 51^{6/} is that the Staff inadequately considered several factors with respect to site Je-3 and that, if these factors were assessed correctly, site Je-3 would be "superior" to Allens Creek. Motion, at 1.

As indicated previously, site Je-3 was compared in the 1975 siting study. Thus, all intervenors have been placed on notice for several years and they could have raised a contention regarding its superiority at that time. In fact, the superiority of Texas coast sites such as the Je-3 site have already been raised by a contention.^{7/} Furthermore, the Staff's analysis of the underlying data and information contained in the 1975 siting study does not constitute new information and therefore good cause does not exist.^{8/}

2. Availability Of Other Means To Protect Interests

The Staff submits that this factor is important in the disposition of this Motion. Contention 55 appears to criticize the Staff's methodology and evaluation of alternative site comparisons. As such, these

^{6/} See "NRC Staff Response to Intervenor Doherty's Motion to Add Additional Contentions 51, 52, 53, and 54," at 4.

^{7/} Hinderstein Contention 5 [Bishop 23(c)].

^{8/} By way of comparison, new information does exist when the Staff expands its alternate site evaluation to include a site or a region not previously under consideration. See Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-366, 5 NRC 39 at 65-67 (1977).

criticisms and differing opinions can be addressed in several ways. First, since these criticisms have been submitted to the Staff during the comment period for the Draft Supplement, they will be responded to as a normal course of business in the Final Supplement No. 2 to the FES. Second, these criticisms and concerns can be addressed to Staff witnesses during cross-examination on the alternative site and Texas coast contentions.^{9/} Both of these methods of inquiry can be used to ensure that Mr. Doherty's concerns and interests can be protected and responded to and, hence, this factor must be weighed against the admission of these contentions.

3. Development Of A Sound Record

The admission of Contention 55 will not aid the development of a sound record. Contention 55 concerns matters that could be developed by probing Staff and Applicant witnesses on the alternative site and Texas coast contentions. These admitted contentions will allow Mr. Doherty through cross-examination to question the superiority of the Allens Creek site vis a vis the Je-3 site which is a coastal site. Thus, a sound record could be developed on this matter through existing contentions and witnesses and, therefore, this factor would be weighed against the admission of this contention. In sum, in the absence of any indication that Mr. Doherty intends to offer any expert witnesses on these issues, this factor must be weighed against the admission of Contention 55.

^{9/} See Tex Pirg contention 1 [Bishop contention 23(a); Conn contention 2; Cumings contention 4; Dogget contention 2; Johnston contention 5-2 and 6-2; Lemmer contention 2] and Hinderstein contention 5 [Bishop contention 23(c).]

4. Representation By Existing Parties

The consideration of this factor, in Staff's mind, is immaterial since Mr. Doherty can represent his own interests with respect to these contentions through cross-examination of Staff and Applicant witnesses.

5. Participation Will Broaden The Issues Or Delay The Proceeding

The admission of Contention 55 will probably not substantially broaden the issues in this proceeding because it would be fair to presume that the issues raised in Contention 55 will be probed in any event through cross-examination of witnesses on admitted contentions. Moreover, due to the fact that the issue of the superiority of a Texas coast site such as the Je-3 site has already been raised (Hinderstein 5 [Bishop 23(c)]) it is doubtful that admission of Contention 55 would cause delay due to additional discovery. However, the potential for some discovery and therefore delay does exist. Accordingly, this factor must be weighed against the admission of this contention.

III. CONCLUSION

In the final analysis, the Staff submits that neither good cause exists nor does a consideration of the other factors weigh in favor of the admission of Contention 55. Generally, the issues that Mr. Doherty seeks to raise can be probed through examination of Staff and Applicant witnesses and, accordingly, in this sense he will not be denied a means to question and develop his concerns for the record. The provisions of

10 C.F.R. § 2.714 would weigh heavily against the admission of this untimely contention when these other means to develop the record are available.

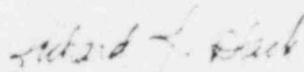
In another sense, the Staff is mindful of the established standard for alternate site review and selection. An applicant's proposed site can only be rejected if an alternative site is "obviously superior." See Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503 at 526-530 (1977); New England Coalition on Nuclear Pollution v. NRC, 582 87 at 95 (1st Cir. 1978). The Commission has recognized two "significant realities" of the NEPA process which support the obviously superior standard--"the inherent imprecision of the cost-benefit analysis and the probability that more adverse information has been developed respecting the closely examined proposed site than any alternates." Seabrook at 528. The recognition that detailed information does not exist with respect to alternate sites as compared to the proposed site has led the Commission to endorse the obviously superior standard because it would be "mistaken to conclude that an alternate site which appeared marginally superior to the proposed site, would remain superior upon further investigation, considering all of the possible but unknown disadvantages of the alternate site." Id. at 529.

The instant motion merely alleges certain deficiencies in the Staff's analysis which pertain to the detail in which an alternate site was reviewed. As such, Contention 55, if assumed correct, would not

establish the requisite standard needed to reject the proposed site. Thus, it would serve no useful purpose to elevate these concerns as issues in controversy at this time when it appears they cannot controvert the ultimate NEPA conclusion that there are no obviously superior sites.

Based on the foregoing reasons, the Staff submits that this Motion to admit Contention 55 should be denied.

Respectfully submitted,



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Dated at Bethesda, Maryland
this 17th day of February, 1981.

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