

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

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



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

ORDER  
(August 21, 1980)

Pursuant to the Board's Order of July 22, 1980, a § 2.752 prehearing conference was held on August 13, 1980, in Houston, Texas. The following parties and counsel entered their appearances: J. Gregory Copeland, Esq., Jack Newman, Esq., and David Raskin, Esq., for Applicant; Stephen Sohinki, Esq. for the NRC Staff; David Preister, Esq. for the State of Texas; Stephen Doggett, Esq. representing himself and Carolyn Conn, Elinore Cummings, Robin Griffith, Leotis Johnston and Rosemary Lemmer; James Scott, Esq. for TexPirg; John Doherty; Margaret Bishop; F. M. Potthoff, III; William Schuessler; Dr. David Marrack; Bryan Baker.

A. Preliminary Matters Considered To Aid In The Orderly  
Disposition Of The Proceeding

1. Intervenors Baker, Schuessler, Potthoff, Doggett, Marrack and TexPirg requested the procedural assistance provided by the amendments to §§ 2.712 and 2.750, and the Board granted the requests. (Tr. 1631, 1633, 1691, 1694, 1695, 1777).

2. The Board denied Dr. Marrack's three motions reflected in his Motion of August 4, 1980. Part I, requesting that the record reflecting a representation in the Staff letter of July 18th be corrected, was denied

in that the record, as now reflecting Dr. Marrack's representation, speaks for itself. Part II apparently argued that the Board had erred in requiring that Applicant and Staff should file motions for summary disposition by August 4, 1980. Part II was denied because the Board did not require Applicant and Staff to file motions for summary disposition by August 4, 1980 and indeed the record reflects these two parties had advised that they were voluntarily proceeding to file by said date. (Staff's letter of July 18, 1980). Further, there was nothing improper in the Applicant and Staff advising that they would file motions for summary disposition by August 4, 1980 because § 2.749 provides that any party may, at least forty-five (45) days before the time fixed for the hearing, move for summary disposition. Obviously, Staff and Applicant did not have to wait until the forty-fifth day before the scheduled hearing date (no date had been fixed prior to the conference) within which to file their motions. Finally, our Order of July 22, 1980 did not preclude any party from discussing amendment of pleadings, and we stated at the prehearing conference that any party could move for leave to amend its contentions. We denied Part III because § 2.752(a) had not been contravened in that this conference was held within sixty days after discovery had been completed on July 9, 1980, and in that said section, in any event, provides that the presiding officer may specify any other time for the holding of a prehearing conference. (Tr. 1633-1637, 1772, 1780-1782).

3. The Board denied Dr. Marrack's Motion To Compel Applicant To Answer Interrogatories of June 11, 1980 In A Responsive Manner, which had been filed on July 26, 1980. In its Response of July 9, 1980 and during the

prehearing conference, Applicant explained that neither it nor its expert witness, Dr. Frank Schlicht, had prepared a study relating to the proposed transmission line corridors. Obviously the Board cannot compel Applicant to prepare a site specific study for Dr. Marrack, and, if the Intervenor had desired to find out what Applicant's expert witness would testify upon, he should have filed written interrogatories or taken depositions prior to July 9, 1980, the completion date for discovery. (Tr. 1637-1641).<sup>1/</sup>

4. The Board denied as untimely Dr. Marrack's Motion For Correction Of Wording Of Contention In NRC Staff Letter 18 July 1980, p. 99, which was dated August 5, 1980. The wording of Dr. Marrack's Contention 2(c) set forth in the Staff's letter of July 18, 1980, precisely reflects the Board's rewording of that contention as admitted in our Order of March 10, 1980. If Dr. Marrack had an objection to our rephrasing of his contention, he should have filed a timely objection, especially in light of the fact that discovery has proceeded on the basis of the Board's rewording (Tr. 1671-1674).

5. The parties discussed Dr. Marrack's Motion For Order Requiring Unilateral Consultations And Advisory Activities By NRC Staff Attorney And Applicant Cease, which had been filed on August 5, 1980. Of course, pursuant to 10 C.F.R. § 2.102, the Staff may request any one party to confer informally with it. Further, nothing was brought to our attention indicating that the Staff's and Applicant's conferring and discussing scheduling and the summarization of contentions prior to meeting with the Intervenor on July 10, 1980 were in any way improper or collusive. Accordingly, the Motion was denied (Tr. 1674-1689).

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<sup>1/</sup> Dr. Marrack did not enter his appearance until after the Board had heard comments upon and had ruled upon his Motion of August 4, 1980 and upon his Motion To Compel dated July 26, 1980.

6. The Board heard discussion relating to Mr. Doherty's Third Motion To Compel Discovery From Applicant served on July 5, 1980. With respect to his fourteenth and fifteenth sets of interrogatories which were the subject of his motion, Mr. Doherty affirmed Applicant's counsel's statement that he had been furnished with the documents referenced in Applicant's responses to these interrogatories and that Applicant's lead engineer had explained to him why these documents had been referenced. He stated that he had no complaints regarding the responses. Accordingly, the Board denied as moot the Motion To Compel of July 5, 1980. (Tr. 1641-1654).

7. The Board granted Mr. Doherty's August 5, 1980 Motion To Compel Discovery From Applicant, and Applicant was given ten days within which to respond to certain interrogatories set forth in Mr. Doherty's sixteenth set of interrogatories. While Applicant offered to make the referenced documents available to Mr. Doherty under the same procedures followed with regard to the fourteenth and fifteenth sets of interrogatories, Mr. Doherty indicated that the burden of deriving or ascertaining the answer was greater than Applicant's burden. See F.R.C.P. 33(c). (Tr. 1645, 1648-1649, 1652-1654).

8. The Board denied without prejudice Mr. Doherty's Fourth Motion To Compel Discovery From Applicant dated July 29, 1980. Pursuant to an agreement with Applicant's counsel, Mr. Doherty may proceed to enter upon the STP site and Polaroid pictures will be taken by Applicant's photographer upon Mr. Doherty's request which will be given to him. If problems arise, Mr. Doherty may file another motion to compel. (Tr. 1654-1668).

9. In light of the ruling upon Mr. Doherty's Fourth Motion To Compel dated July 29, 1980, and in light of Applicant's counsel's statement that the same offer will be made to Mr. Scott as had been made to Mr. Doherty,

the Board also denied without prejudice TexPirg's Motion To Compel Site Visit According To NRC Rules, dated August 2, 1980. The Board suggested that TexPirg's Mr. Scott attempt to arrange an agreement along the lines that were worked out with Mr. Doherty, and that Mr. Scott and Mr. Doherty together inspect the STP site. If problems arise, Mr. Scott may file another motion to compel. (Tr. 1668-1671).

10. TexPirg had filed an undated Motion To Compel Discovery Upon HL&P and NRC Staff, which the Board assumed had been dated or served on August 2, 1980. To the extent the Motion To Compel was directed to the Staff, the Motion was denied as having been mooted since the Staff had filed partial responses on July 29, 1980 to TexPirg's Interrogatories of July 9, 1980. Staff counsel advised that Mr. Scott had not objected to the fact that the response was a partial one, and stated that the balance of the responses to TexPirg's interrogatories would be filed within the next few weeks. (Tr. 1671, 1695-1696, 1700). Because Mr. Scott had not entered an appearance up to that time, the Board proceeded to hear Applicant's counsel's oral responses in opposition to TexPirg's Motion To Compel but the Board stated that it would have to review the interrogatories and responses before ruling upon the Motion (Tr. 1696-1700).

11. The Board discussed with Applicant and Staff the Order Re: Items And Questions Of Interest To The Board dated July 31, 1980, and added one more item which had been referred to in the Order of March 30, 1979 at page 3. (Tr. 1701-1709).

12. With respect to the six protective orders previously issued, the Board directed that, within thirty days, Applicant should have officers of the affected companies (General Electric and Brown and Root) submit



affidavits to the Board in support of the claim of entitlement to protective treatment by demonstrating that (a) the information in question was of the type customarily held in confidence by its originator, (b) there is a rational basis for having customarily held it in confidence, (c) it has, in fact, been held in confidence, and (d) it is not found in public sources. (Tr. 1710).

13. Mr. Schuessler furnished copies of a submission captioned Consolidation of TexPirg, Doggett And Schuessler Contentions Dealing With Adequacy Of Applicant's Emergency Evacuation Plans, which he stated had been served on August 12, 1980. Applicant and Staff were given leave to respond and/or to file a motion to strike. (Tr. 1717, 1731-1736).

B. Matters Considered Which Were Set Forth In the Order  
Scheduling Prehearing Conference dated July 22, 1980

1. The Board stated that any party may file a motion for summary disposition pursuant to § 2.749, and inquired whether any of the Intervenor attending the conference planned to file such motions. (Tr. 1713, 1715-1717, 1719). Pursuant to § 2.711(a), the Board directed that (a) Intervenor shall have between August 14 and October 2, 1980 to respond to Applicant's and Staff's motions for summary disposition, (b) on or before September 12, 1980, intervening parties must file their motions for summary disposition, if any, (c) Applicant and Staff shall respond to any Intervenor's motion for summary disposition on or before October 2, 1980, (d) any motions for extension of time must show good cause and specify the progress made toward completion of the motions for summary disposition or of the responses thereto, and (e) if any Intervenor files a motion for summary disposition, he will telephone Mr. Copeland, who will make arrangements to secure a copy of the motion and expedite its delivery to Staff counsel, Mr. Sohinki. (Tr. 1744-1747).

2. The Board advised the parties that (a) as soon as possible after October 2, 1980, the Board will issue an order ruling on the motions for summary disposition, (b) thereafter it will schedule a second § 2.752 conference to discuss scheduling, and (c) the Board anticipates the hearing will commence the second week in January, 1981 or shortly thereafter, and expects the parties to prepare their cases in order to proceed to hearing at that time.<sup>2/</sup> (Tr. 1747-1748).

The Board determined that environmental matters will be heard first at the hearing, and that health and safety matters will be heard thereafter. (Tr. 1773).

The Board inquired whether the attending Intervenor intended to file written testimony and to present factual or expert witnesses. (Tr. 1726-1730, 1736-1737). The Board advised that an Intervenor (a) is not required to present direct testimony and may merely cross-examine, (b) can present direct testimony only with regard to his own admitted contentions, but may cross-examine upon other parties contentions so long as he has a discernible interest in the resolution thereof, and (c) cannot present direct testimony on someone else's contention; however he may move for leave to file a late contention to assert the contention on his own behalf, but he must satisfy the Board that the Intervenor has shown good cause for having failed to have raised the contention earlier and that allowance of the motion may assist the Board in the proper resolution of the issue without occasioning

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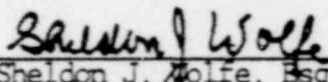
2/ In light of its rulings on scheduling, the Board denied Applicant's Motion To Set A Schedule For Commencing Evidentiary Hearings, dated August 7, 1980 (Tr. 1789).

unwarranted delay. See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857 (1974). (Tr. 1725-1726).

3. The Board advised the parties that the decision was left to them whether or not to agree upon summarized contentions (Tr. 1748-1750).

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Sheldon J. Wolfe, Esquire  
Chairman

Dated at Bethesda, Maryland  
this 21st day of August, 1980.