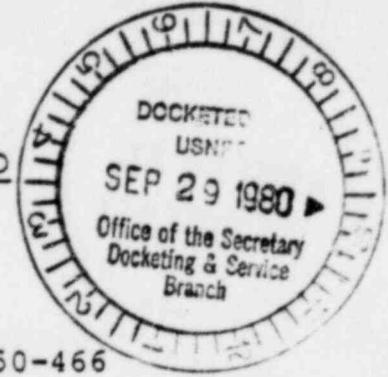


September 25, 1980

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 §
No. 1) §

Docket No. 50-466

APPLICANT'S RESPONSE TO INTERVENOR DOHERTY'S
MOTION FOR ADDITIONAL TIME

Intervenor John Doherty filed a Motion dated September 15, 1980, for an extension of time in which to reply to Applicant and Staff motions for summary disposition. Mr. Doherty requests an extension of 42 days beyond the time limit set by this Board's Order of August 21, 1980, and approximately 80 days over and above the time allowed by the Commission's Rules of Practice and Procedure. (10 C.F.R. § 2.749) Mr. Doherty has failed to demonstrate any good cause for this request, and it should be denied.

Mr. Doherty's request must be considered in the light of the extensive time period Intervenors have had to prepare for hearings. The Board has already recognized that the protracted nature of this proceeding to date calls for and supports an "expeditious" procedure henceforth. ^{1/} With

1/ Prehearing Conference of August 13, 1980, Tr. 1800.

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this in mind, the Board presaged Intervenor's request for an extension of time when it declared that "[intervenors] must establish specific good cause and evidence to the Board very clearly why you have to have an extension of time of so many days."^{2/}

Mr. Doherty's Motion does not begin to meet the standard established by the Board. The Motion rests almost entirely on unsubstantiated assertions that Intervenor requires additional time to respond to motions for summary disposition because of delays in obtaining information in three instances.^{3/} As discussed below, in none of these three instances is it even alleged that such information is relevant to any identified motion for summary disposition.

(1) Mr. Doherty asserts that "a few relevant" Staff answers to interrogatories are outstanding. He does not, however, inform the Board of how many such answers are outstanding, which ones they are, or how they are relevant to the unidentified motions for summary disposition. Mr. Doherty certainly makes no showing that these particular interrogatories are the precise ones upon which he is relying to form a genuine issue of fact to support his contentions, or that failure to obtain

^{2/} Id. at 1745.

^{3/} Mr. Doherty's other arguments are basically the same--the hearings have been delayed so there should be more time available for dealing with motions for summary disposition. These arguments present only a case for how delay might be accommodated, not why a delay is justified.

responses so prejudices his ability to respond to particular motions for summary disposition^{4/} that the allotted time must be doubled from that now provided. Indeed, Mr. Doherty does not make a "specific" and "clear" case that his ability to respond to any particular motion for summary disposition has been prejudiced at all.

(2) Mr. Doherty represents that documents to which he was "entitled" were withheld until September 12, 1980. Intervenor's representations are not in accordance with the facts: On August 4, 1980, Applicant identified by letter (attached) thirteen documents referenced in its motions for summary disposition which were not previously produced to Intervenor. Applicant advised Mr. Doherty that these documents were available for immediate inspection.^{5/} Mr. Doherty made no attempt to inspect any documents nor made any inquiry about them until September 11, 1980 (see attached telephone minutes).^{6/}

^{4/} Presumably, a "few" answers can only be "relevant" to a few motions for summary disposition.

^{5/} There were three other public documents identified which had not arrived as of August 4. However, the three documents were available for inspection by August 8 and would have been produced as early as that date if Mr. Doherty had ever requested to inspect them.

^{6/} Mr. Doherty also misrepresents that the documents were made available at the Applicant's Energy Development Complex (EDC). As Applicant has advised the Board several times, there was an informal understanding that Applicant's counsel would produce documents in their downtown offices if this were more convenient for Mr. Doherty, and counsel have done so on several occasions.

Mr. Doherty's delay in inspecting these documents is his own; in fact, as of this date, Mr. Doherty has still made no effort to inspect these documents.

(3) Finally, Mr. Doherty asserts that unavailable sections of the "Reed Report" are "relevant" to "certain of his Contentions." No explanation is offered as to how these sections are relevant to any issue in the proceeding or to any contention which is the subject of a motion for summary disposition.

Applicant has provided information well beyond that called for by the agreement with Mr. Doherty on the inspection of the "Reed Report." Moreover, Mr. Doherty has pursued the "Reed Report" information at a most leisurely pace. He did not make known his belief that portions were relevant to the motions for summary disposition until almost a month after the motions were filed and six weeks after the subject contentions were identified. He did not even inspect the proffered material until a month after it was made available under the Board's Protection Order.

* * *

Mr. Doherty's "reasons" for failing to meet the responsibilities of a party are not reasons at all, but simply excuses. In weighing such representations the Board may be guided by the direction of the Appeal Board:

In considering whether, in a particular case, delay should be countenanced to allow a party to obtain additional information, a board must

balance the effects of such delay against such countervailing factors as the alacrity with which the information was requested when its materiality became apparent, the particular relationship of requested information to unresolved questions in the proceeding, and the overall importance of the information to be a sound decision.

Illinois Power Company (Clinton Power Station, Units 1 and 2),
ALAB-340, 4 NRC 27, 33 (1976).

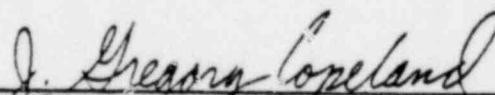
Mr. Doherty has shown little interest, much less alacrity, in seeking this "information" up until now. He has not shown any relationship between the missing "information" and his responses to the motions for summary disposition; nor has he attempted to show why the length of the requested postponement is appropriate. All these failures come after the Board's plain instructions to provide clear and specific justifications for delay requests. Mr. Doherty's request is deficient on all counts and should be denied.

Respectfully submitted,

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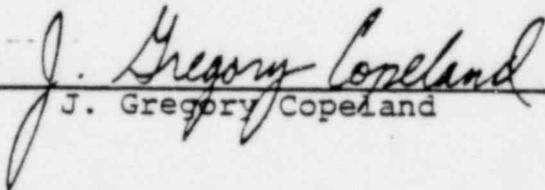
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J. Gregory Copeland

POOR ORIGINAL

H-2412-701(G)

August 4, 1980

Mr. John F. Doherty
4327 Alconbury
Houston, Texas 77021

Dear Mr. Doherty:

In past Interrogatories you have asked us to identify documents upon which we may rely in rebutting various of your contentions. In the last week, while preparing motions for summary disposition, we have identified a number of these documents which have not been produced to you. The following documents are referenced in the affidavits supporting our motions for summary disposition and are available for your inspection during the period allowed you by the Board for responding to these motions:

1. NUREG - 0578
2. NUREG - 0085
3. NUREG - 0313
4. NUREG - 0531
5. NUREG - 0582
6. NUREG - 0483
7. NEDO - 21660
8. "The Application of Low Carbon Type 316 Stainless Steel for BWR Recirculation Piping System"
9. "Mitigation of Stress Corrosion Cracking in BWR's"

POOR ORIGINAL

Mr. John F. Doherty

Page Two

10. "Cleaning of Piping and Equipment"
11. "Effect of Thermal Hydraulic Feedback on the BWR Rod Drop Accident"
12. General Electric letter on "Reactor Internal Vibration Program"
13. Nuclear Power Experience Reports

The following documents are also referenced in these affidavits, have not been produced to you, but are not presently in Applicant's possession. We are attempting to acquire copies of these documents from General Electric and elsewhere in order to make them available to you:

1. EPRI-NP-564
2. "Modification to Eliminate Incore Vibration" (Letter)
3. Safety Evaluation Report on BWR Channel Box

The remaining references in the affidavits are standard texts and published journals.

Sincerely yours,

BAKER & BOTTS

By: _____
C. Thomas Biddle, Jr.

Attorney for Houston
Lighting & Power Co.

CTBJr/155

H-2412-701C-2
HOUSTON LIGHTING & POWER COMPANY
(Allens Creek Licensing)

September 11, 1980

MEMORANDUM

TO: File

FROM: Tom Biddle

Re: Telephone Conversation with Doherty

On September 11, 1980, Doherty called to raise two questions. First, he inquired whether we had received his further request that G.E. produce certain parts of the "Reed Report." I informed him that we had received his request, had forwarded it to G.E. and were awaiting a response.

Doherty also asked whether the three documents identified to him in a letter of August 4, 1980, as referenced in affidavits but as yet unavailable, were now in fact available for inspection. I told him I would check and give him an answer within 24 hours. Lynn Klement reports that these documents are available. Doherty also informed me of his new home phone number which is 747-1837.

C.T.B.

:90

cc: Mr. Copeland
Mr. Klement
Mr. Richards