

1/30/81

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

NRC STAFF RESPONSE TO INTERVENOR  
DOHERTY'S MOTION OF JANUARY 19, 1981



I. INTRODUCTION

On January 19, 1981, Intervenor John F. Doherty, filed a document entitled "Intervenor Doherty's Motion for the Board to Call as a Witness; Demetrios Basdekas For His Contention 8 (in part), 12, 17, 24, 28, 41 and 42" (Motion). This motion requests that this Board call as its witness in this proceeding a member of the NRC Staff, Demetrios Basdekas. Mr. Basdekas is a Reactor Safety Engineer in the Reactor Safety Research Division of the Office of Nuclear Regulatory Research. He has previously expressed his opinion with respect to the safety implications of control systems and plant dynamics which was the subject of Board Notification 80-15, "Differing Professional Opinion Board Notification," dated November 29, 1980. Intervenor Doherty asserts that his Contentions 8, 12, 17, 24, 28, 41 and 42 all are relevant to the subject matter addressed by Mr. Basdekas' differing professional opinion.

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## II. DISCUSSION

The Staff recognizes its general obligation to lay all relevant materials before a licensing board to enable the Board to dispose of issues before it. Consolidated Edison Co. of New York (Indian Point Station, Units 1, 2 and 3), CLI-77-2, 5 NRC 13 (1977). This obligation would include the responsibility to inform an adjudicatory board of all differing professional opinions where relevant to the issues. See, e.g., Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), CLI-78-18, 8 NRC 293 (1978).

Moreover, the Commission's Rules of Practice in 10 C.F.R. § 2.720(g)<sup>1/</sup> provide a procedure whereby a board may, upon a show of "exceptional circumstances," require the attendance and testimony of a named member of the NRC Staff if that person has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director of Operations. While it is true that Mr. Basdekas' differing professional opinion has been the subject of a Board Notification, it cannot be established at this time whether that opinion on control systems is reflected in current Staff positions

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<sup>1/</sup> 10 C.F.R. § 2.720(g) provides, in part:

In a proceeding in which the NRC is a party, the NRC staff will make available one or more witnesses designated by the Executive Director for Operations for oral examination at the hearing or on deposition regarding any matter, not privileged, which is relevant to the issues in the proceeding. The attendance and testimony of the Commissioners and named NRC personnel at a hearing or on deposition may not be required by the presiding officer, by subpoena or otherwise: Provided, That the presiding officer may, upon a showing of exceptional circumstances, such as a case in which a particular named NRC employee has direct personal knowledge of a material fact not known to the witnesses made available by the Executive Director for Operations require the attendance and testimony of named NRC personnel.

with respect to the Allens Creek Nuclear Generating Station. Since Staff positions on control systems have not been finalized in either the final supplement to the Safety Evaluation Report (SER) or in Staff testimony, it cannot be determined whether Mr. Basdekas' opinion will be incorporated in those positions.<sup>2/</sup> Nor has Mr. Doherty set out in his motion the relationship between his contentions and Mr. Basdekas' opinion. Absent those matters, "exceptional circumstances" cannot be shown to exist; and this Licensing Board should not now determine that Mr. Basdekas has "direct personal knowledge" of facts not known to the Staff witnesses who will ultimately testify on these issues.<sup>3/</sup>

### III. CONCLUSION

Based on the foregoing discussion, the Staff submits that this Motion should be denied at this time. The Staff will keep the Board and parties apprised of these matters and if it appears at some future date that Mr. Basdekas' opinion will not be reflected in the final Staff position on Allens Creek control systems, the Motion can be renewed at that time without prejudice.

Respectfully submitted,

*Richard L. Black*

Richard L. Black  
Counsel for NRC Staff

Dated at Bethesda, Maryland,  
this 30th day of January, 1981.

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<sup>2/</sup> In this regard we would note that on December 24, 1980, the Commission approved the inclusion of Safety Implication of Control Systems as a new Unresolved Safety Issue. See SECY-80-325. Consequently, this new Unresolved Safety Issue must be addressed by the Staff in the SER before final licensing action for Allens Creek.

<sup>3/</sup> Cf. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), Memorandum and Order, November 6, 1980 (unpublished).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO INTERVENOR DOHERTY'S MOTION OF JANUARY 19, 1981" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission internal mail system, this 30th day of January, 1981:

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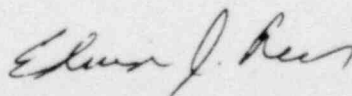
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