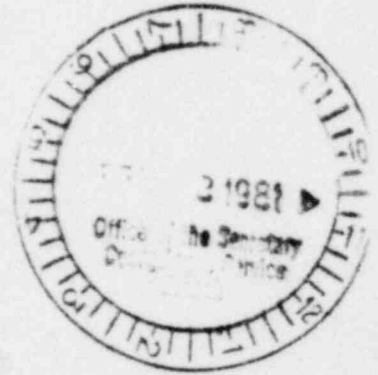


January 28, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of

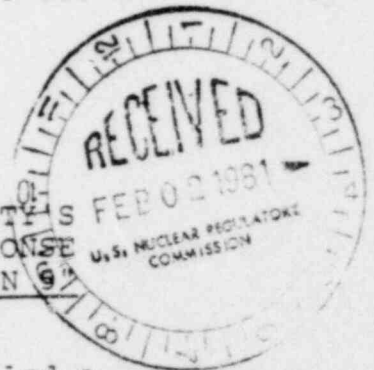
HOUSTON LIGHTING & POWER
COMPANY

(Allens Creek Nuclear
Generating Station, Unit
No. 1)

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Docket No. 50-466

APPLICANT'S RESPONSE TO "INTERVENOR DOHERTY'S
SUPPLEMENTAL RESPONSE TO APPLICANT'S RESPONSE
FOR SUMMARY DISPOSITION FOR HIS CONTENTION"



On January 19, 1981, Intervenor Doherty filed a "Supplemental Response" to Applicant's Motion for Summary Disposition on Intervenor Doherty's Contention No. 5 filed five and one-half months earlier. Nowhere in this pleading does Mr. Doherty explain his basis for filing a "Supplemental Response" over two months past the filing date for responses to motions for summary disposition set by the Board. Indeed, this pleading is without an accompanying motion for leave to file a late response. It is clear from past events and the rulings of this Board that Mr. Doherty has no basis for filing such a tardy pleading and, therefore, his "Supplemental Response" should not be entertained.

In order to appreciate what Mr. Doherty is attempting to do with this late-filed "Supplemental Response," it is necessary to retrace each step by Mr. Doherty. On October 25, 1980, Mr. Doherty filed his third motion asking for an indefinite extension

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of time to file "additional reply material" to motions for summary disposition on his Contention Nos. 5, 15, 33 and 45, based upon when the Reed Report became available "either through administrative action or subpoena." Five days later, on October 30, 1980, the Board ruled on Mr. Doherty's second request for an extension of time to file responses concerning these same contentions (filed on October 22, 1980). In light of Applicant's October 10, 1980, response stating that sections of the Reed Report requested by Mr. Doherty had been available for Mr. Doherty's inspection since September 30, 1980, the Board ruled that Mr. Doherty should inform the Board whether or not he intended to withdraw his motion for a subpoena. The Board further ruled that "no further extension of time would be allowed" beyond the eleven day extension for filing responses granted Mr. Doherty in that order.

Applicant's responses to both of Mr. Doherty's motions for extensions of time (filed October 27, and 30, 1980, respectively) explain fully that whatever handicap--and, hence, justification for an extension of time--Mr. Doherty attributes to the "unavailability" of "Reed Report" materials is due to his own lack of diligence. What is now Mr. Doherty's fourth attempt, in this "Supplemental Response," to create an excuse for failing to take timely action must be considered in the context of the sequence of events surrounding the production of the Reed Report materials.

As early as June 27, 1980, Applicant made available to Intervenor Doherty, under a mutually agreed-upon protective order, materials from the Reed Report as provided in a settlement agreement. He did not inspect these materials until July 24, 1980. In the interim, Mr. Doherty tried to circumvent the agreed-upon settlement by filing a second motion for a subpoena.^{1/} Mr. Doherty withdrew this motion by letter of July 22, 1980.

Ultimately, Intervenor Doherty submitted thirty-seven informal interrogatories concerning these materials to Applicant's counsel. Although the great majority of these interrogatories were unrelated to admitted contentions, Applicant forwarded complete answers, compiled by General Electric Company, within ten days.

Nearly a month later, Mr. Doherty requested that eight "sections" of the Reed Report be provided him. Again, the majority of Mr. Doherty's requests were completely outside the scope of admitted contentions and all of the requests were beyond the negotiated settlement agreement. Nevertheless, Applicant secured all of the verbatim extracts from the Reed Report requested by Mr. Doherty, consisting of some fifty-three pages from that report. Mr. Doherty was advised by letter of September 30, 1980, that these portions of the Reed Report were

^{1/} This "motion," like the first and subsequent "motions," was defective in form and substance and plainly insufficient to support the issuance of a subpoena.

available for his inspection.^{2/}

Mr. Doherty made no attempt whatsoever to inspect the reproductions from the Reed Report requested by him until nearly a month and a half later. On November 15, 1980--the day after the filing date for responses to Applicant's motions for summary disposition--Mr. Doherty gave his first indication, by telephone, that he intended to inspect the excerpts that had been produced for him. Again, in the interim, Mr. Doherty ignored Applicant's attempts to informally accommodate his desire to review the material, and filed a third motion for a subpoena. This motion was also withdrawn by Mr. Doherty at the prehearing conference of December 2, 1980.

Now, in this "Supplemental Response," Mr. Doherty apparently presumes that he has good cause for late filing of allegedly pertinent "information" gathered from his inspection of the Reed Report excerpts on January 5, 1981.^{3/} Applicant

^{2/} Mr. Doherty was requested to concur in a perfunctory amendment of the prior protective order to cover the production of these additional materials. Mr. Doherty did not do so until November 21, 1980. The amendment was issued in a Board order of December 5, 1980.

^{3/} Applicant feels obliged to point out to the Board that Mr. Doherty's "Supplemental Response" attempts to misconstrue the quotations from the Reed Report to imply that "no full-scale tests have been done on the Mark-III system" as recommended or required. (Supplemental Response at 2). This conclusion is inconsistent with the language of the quotations themselves and directly contradicted by the statements of Applicant's affiant, Peter Stancavage.

submits that Mr. Doherty's more than adequate opportunity to use the material produced for his inspection has long passed. He does not have this Board's leave to "Supplement" his responses and certainly no good cause exists in light of his leisurely approach to this matter. Applicant has cooperated fully with Mr. Doherty's discovery of the Reed Report; Mr. Doherty cannot now profit from his failure to follow through in the opportunities presented to him. If he is allowed to continuously "update" his pleadings without good cause, this proceeding simply cannot be conducted in an orderly and expeditious manner.

For all the foregoing reasons, "Intervenor Doherty's Supplemental Response to Applicant's Motion for Summary Disposition for His Contention 5" should be rejected.

Respectfully submitted,

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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HOUSTON LIGHTING & POWER
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Docket No. 50-466

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing
Applicant's Response to "Intervenor Doherty's Supplemental
Response to Applicant's Response for Summary Disposition for
His Contention 5" in the above-captioned proceeding were
served on the following by deposit in the United States mail,
postage prepaid, or by hand-delivery this 28th day of January,
1981.

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