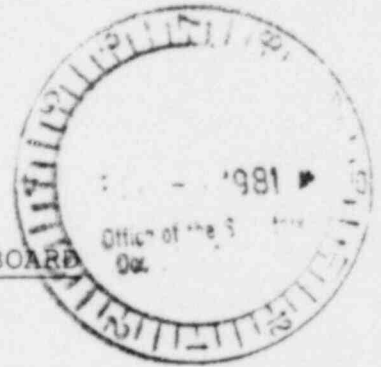


February 5, 1981



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 1)

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Docket No. 50-466

APPLICANT'S RESPONSE TO JOHN F. DOHERTY CONTENTION 55

I. INTRODUCTION

On January 26, 1981, Mr. Doherty filed a fifth new environmental contention relating to the Staff's alternate site analysis in the draft of Supplement No. 2 to the Final Environmental Statement (hereinafter "Draft Supplement"). Again, Mr. Doherty has failed to address the requirements of 10 CFR §2.714. As Applicant stated in response to Mr. Doherty's January 15 motion,^{*/} the simple existence of the Draft Supplement does not exempt Mr. Doherty from the necessity to address the requirements of Section 2.714. Further, a balancing of the factors set forth in Section 2.714 weighs against the admission of new alternative site contentions at this late date in the proceeding. Applicant believes that each of the arguments in

^{*/} See, "Applicant's Response to John F. Doherty Contentions 51, 52, 53 and 54," dated January 26, 1981.

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its prior response which are not addressed to specific allegations in Contentions 51-54, are applicable here and those arguments are incorporated in this response. In addition, Applicant provides the following discussion of Contention 55.

II. TIMELINESS

Good Cause

Mr. Doherty implicitly^{*/} relies on the issuance of the Draft Supplement to justify admission of a late-filed contention. Such reliance is unfounded. If Mr. Doherty truly had an independent basis for alleging that the JE-3 site is superior to Allens Creek that basis should have been discernable long before now. Indeed, Mr. Doherty has never explained why he could not have placed in issue the superiority of this site when he initially intervened in this proceeding.

Mr. Doherty also cannot claim that he was unaware until publication of the Draft Supplement that the JE-3 site was a potential alternative site. On February 1, 1979, the

^{*/} Again, as stated above, Mr. Doherty never addresses the factors set forth in 10 CFR §2.714.

^{**/} Certainly Mr. Doherty cannot claim that the Draft Supplement revealed facts, heretofore undisclosed, which demonstrate the obvious superiority of the alternative sites discussed in the Draft Supplement. The overwhelming conclusion by the Staff is that none of the alternative sites are obviously superior.

Staff issued a notice advising Mr. Doherty and others that the LE-3, JE-3 and MI-3 sites were being evaluated by the NRC Staff.^{*/} Those sites were listed in a study done for Applicant by the Tera Corporation in 1975 and this document was made available in the public document room in Sealy in early 1979. This document was also produced in response to a discovery request by intervenors shortly thereafter.^{**/}

Availability of Other Means to Protect Interests

In Applicant's view this factor weighs very heavily against admission. The JE-3 site is already the subject of an alternative sites contention in this proceeding. It is discussed in detail in the testimony of Applicant's witness Schoenberger and the coastal sites study attached to that testimony. It is also within the scope of the Staff's testimony on this contention, which testimony relies on the information presented in the Draft Supplement. Mr. Doherty has not provided any reasons why his concerns cannot be fully considered during cross-examination of witnesses who have already addressed this very issue; nor has he suggested that he will present a competent expert witness to testify on this subject.

^{*/} Memorandum from R. W. Froelich to Voss A. Moore dated February 1, 1979; Subject: Staff Visit to Alternative Sites-Allens Creek (Memorandum includes statement that public hearings on this and other alternative sites would be held on February 8, 1979. A copy was served on all parties.)

^{**/} Applicant's Response to Hinderstein's First Set of Interrogatories (April 2, 1979).

Subpart (a) of Doherty Contention 55, for example, challenges the Staff's method of calculating land preempted by new transmission lines. Applicant cannot perceive what possible additional testimony would be presented on this issue that would supplement any information obtained by cross-examining Applicant and Staff witnesses on the coastal sites contention.^{*/}

Subpart (c) of the new contention merely alleges that the Draft Supplement mentioned less endangered or threatened animal and plant species than does the FSFES issued in 1977 and in Applicant's coastal site study. Any possible inconsistency can easily be addressed during upcoming cross-examination. Mr. Doherty provides no indication that he has affirmative evidence to overturn the Staff's conclusion, based on a large number of other factors, that impacts on terrestrial habitat at the JE-3 site may be significant.

Subparts (d) and (e), while unclearly written, appear to contend that the JE-3 site should be considered using mechanical draft cooling towers. The simple answer to this is that Applicant's witness Schoenberger did just that, and Mr. Doherty will have ample opportunity to explore that witness' conclusions on cross-examination.

^{*/} Mr. Doherty does not even address the significant environmental impacts associated with placing transmission line corridors through a number of "proposed and existing natural areas" (Draft Supp., p. 2-38) which forms the basis for the Staff's conclusion on this matter.

Subparts (f) and (h) amount to nothing more than Mr. Doherty's opinion that the Staff has not documented enough evidence to justify its conclusion. Again, the basis for the Staff's conclusions can, and should, be pursued on cross-examination. Mr. Doherty does not allege, nor even infer, that he has any evidence of his own to counter the Staff's conclusion.

Assistance in Developing a Sound Record

Despite having the largest number of contentions admitted into this proceeding, most of which are highly technical in nature, Mr. Doherty has yet to identify any expert witnesses who will support his positions on these many issues. Moreover, he has not indicated that he has any witnesses to supplement the record on this issue, and thus no grounds exist for concluding that admission of a new contention will assist in developing a sound record. Typical of Mr. Doherty's contention, subpart (g) represents the opinion of a lay person regarding the manner in which Houston Lighting & Power Company ought to manage the flow of electricity through its transmission system. Mr. Doherty knows absolutely nothing about this technical question nor does he appear to understand any of the ramifications of his far-fetched suggestion.

Means Whereby Intervenors' Interest may be Protected by Other Parties

Since Mr. Doherty, as well as the other intervenors in this case, will have ample opportunity to pursue the concerns addressed in Mr. Doherty's contention on cross-examination, this factor cannot be weighed in Mr. Doherty's favor.

Delay

Mr. Doherty's latest pleadings serve to underscore this intervenor's tactical approach to this proceeding. It is clear that Mr. Doherty's decision to forward his concerns in the form of late-filed contentions does not reflect a desire to ensure that the record in this proceeding is fully developed; this could have been accomplished via cross-examination or by submitting comments on the Draft Supplement. If Mr. Doherty can add contentions by simply alleging that there are, in every document filed by the Staff throughout this proceeding, new contentions which must be clarified in discovery and then addressed at further hearings, this Board's attempt to move this proceeding forward in an orderly manner will truly be undermined. Accordingly, and in light of the fact that this proceeding is long past the intervention stage, the delay factor should be weighed significantly against admission of this contention. See, Detroit Edison Company (Greenwood Energy Center), ALAB-476, 7 NRC 759, 762 (1978).

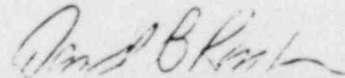
III. ADEQUACY OF THE CONTENTION

Mr. Doherty's contention simply does not set forth any solid grounds for concluding that the LE-3 site is "obviously superior" to Allens Creek. This contention amounts to little more than disagreement with the methods by which certain of the site comparison factors were calculated by the Staff, an approach which is foreclosed by the Commission's Seabrook decision wherein the "obviously superior" test was established. This standard is intended to help assure that a proposed site will not be rejected unless another site with significantly less environmental costs is identified. Mr. Doherty has provided no basis, nor even speculation, as to why the JE-3 site qualifies under this standard.

IV. CONCLUSION

For all of the foregoing reasons, Applicant requests the Board to reject Doherty Contention 55.

Respectfully submitted,



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(Allens Creek Nuclear Generating	§	
Station, Unit 1)	§	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicant's Response to John F. Doherty Contention 55 in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, or by hand-delivery this 5th day of February, 1981.

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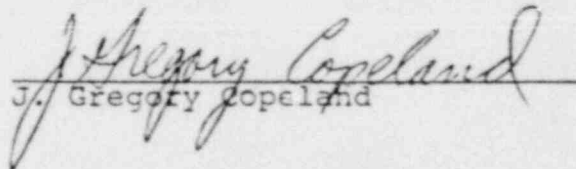
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