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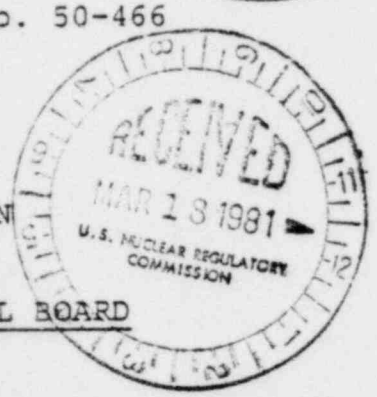
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	§	
	§	
HOUSTON LIGHTING & POWER COMPANY	§	Docket No. 50-466
	§	
(Allens Creek Nuclear Generating Station, Unit 1)	§	



APPLICANT'S RESPONSE TO TEXPIRG'S MOTION FOR RECONSIDERATION OF VARIOUS RULINGS DURING EVIDENTIARY HEARINGS, AND FOR CERTIFICATION OF VARIOUS ISSUES TO THE APPEAL BOARD

I. Procedural History

On January 29, 1981, TexPirg filed, under one cover, a series of motions to the Licensing Board and the Appeal Board seeking the following relief: (1) a variety of rulings on various procedural matters; (2) referral of an interlocutory appeal pursuant to 10 CFR §2.730(f); (3) certification of various issues pursuant to 10 CFR §2.718(i); and (4) the removal of the Licensing Board. On February 3, 1981, the Appeal Board issued a Memorandum and Order denying TexPirg the relief sought from that panel. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-630, ____ NRC ____ (February 3, 1981). Specifically, the Appeal Board noted its disapproval of "the practice of simultaneously seeking Licensing Board reconsideration of interlocutory rulings and

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appellate review of the same rulings." (Slip op. at 2). The Appeal Board further reminded TexPirg that any subsequent appeal "must refer to the specific page or pages of the hearing transcript upon which each challenged ruling or action appears" (Id.) and admonished that it did not normally interfere with the "day-to-day" rulings of the Licensing Boards. (Slip op. at 3). Finally, the Appeal Board explained the correct procedure for presenting a request to disqualify one or more members of a licensing board pursuant to 10 CFR §2.704(c). (Id.)

At the evidentiary sessions held on February 5, 1981, Applicant's counsel inquired of the Board whether, in light of ALAB-630, the Board wanted Applicant and Staff to file written responses to TexPirg's motion. (Tr. 4807). The Board stated that written responses would be helpful in ruling on the remaining portions of TexPirg's motion, and requested Applicant and Staff to respond. (Tr. 4808). The Board then ruled that the portion of TexPirg's filing which sought disqualification of the Board, being procedurally defective, was denied. With respect to the remaining portions of TexPirg's motion, the Board ruled that TexPirg would be required to resubmit its motion after inserting citations to the record of rulings which TexPirg sought to have reconsidered. (Tr. 4812).

On February 17, TexPirg resubmitted the same document with a few textual changes and record citations written-in by

hand at various places. The portions of TexPirg's motion which requested disqualification of the Board and which sought interlocutory review by the Appeal Board were also resubmitted. On February 23, the Appeal Board issued a Memorandum and Order again dismissing TexPirg's attempt to obtain review from that panel and instructing TexPirg that it had not intended for TexPirg to simply refile its earlier motion with citations added.

In light of the two Appeal Board rulings and the Licensing Board's rulings at Tr. 4807-4812, Applicant has not responded to those portions of TexPirg's refiled motion which have already been mooted. In addition, Applicant has treated as withdrawn those allegations in TexPirg's motion which have not been supported by citations to the record as required by the Board.*/

II. Background

TexPirg's motion was originally filed after approximately two weeks of hearings and was refiled after four weeks of hearings in this proceeding. It is replete with assertions of Board prejudice, misrepresentations of rulings by the Board,

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*/ However, Applicant has addressed several of these unsupported allegations in the body of this response, since in our view a complete record on TexPirg's motion requires that certain of these matters be brought to the Board's attention.

and mischaracterizations concerning the state of the record. Applicant responds below to each of the allegations in TexPirg's filing, however, it is essential that the allegations raised by TexPirg be considered in the context of the behavior of its own counsel.

Applicant believes that the record will show that counsel for TexPirg has conducted cumulative and repetitious cross-examination (E.g., Tr. 2993, Tr. 3021-22, Tr. 3526-29, Tr. 3564-71, Tr. 3673-76, Tr. 4173-74, Tr. 4919-24, Tr. 4955-59, Tr. 5021-23, Tr. 5051); that many lines of questioning have been pursued with no legitimate purpose (E.g., Tr. 2793-99, Tr. 2886-90, Tr. 2913-16, Tr. 3043-45, Tr. 3048-53, Tr. 3544-50, Tr. 3592-94, Tr. 3632-34, Tr. 4062-68, Tr. 4131-35, Tr. 4931-34, Tr. 5025-31, Tr. 5051, Tr. 5082-88, Tr. 5366-73); that counsel for TexPirg has come into and walked out of the proceeding, returning to ask questions already put to the witness by other parties (E.g., Tr. 2773; Tr. 2885-86, Tr. 2960-61, Tr. 4181-84) and to re-argue Board rulings made at earlier sessions (E.g., Tr. 4068, Tr. 4109). Counsel has even failed to appear at sessions at which his own witness was being cross-examined (E.g., Tr. 4497-98, Tr. 4511-13, Tr. 4556-58, Tr. 4616-19) -- all at the expense of the orderly conduct of this proceeding, and indeed to the disservice of his fellow-intervenors.*/

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*/ One fellow-intervenor went so far as to reprimand TexPirg counsel on the record for acting in a discourteous manner. (Tr. 6198-99).

Ultimately, the Board was required to take graduated measures to guarantee the development of a meaningful record. In Applicant's view the Board has acted reasonably in the face of this conduct, and has taken minimal steps (far short of those it might have taken) to preserve order in this proceeding. It is against this background that the matters raised by the extant pleading must be considered.

III. Limitations on Cross Examination

The majority of TexPirg's allegations challenge various Licensing Board rulings limiting the scope and extent of cross-examination and imposing attendance requirements on intervenors who wish to engage in cross-examination. The gravaman of TexPirg's motion is that this Board has abused its discretion in the conduct of this proceeding. In Applicant's view, the Board's actions are consistent with its obligation to take evidence in an orderly and expeditious manner, while ensuring full ventilation of the issues. (10 CFR §2.718; Northern Indiana Public Service Co. (Bailly Generating Station), ALAB-224, 8 AEC 244, 250-51 (1974)).

Because questions of the scope of cross-examination, and the parties that may engage in it often depend upon the posture of a particular case, such matters are committed to the discretion of the Licensing Board. Public Service Company of Indiana (Marble Hills Units 1 and 2), ALAB-461, 7 NRC 313, 316

(1978). The Commission's regulations explicitly authorize Licensing Boards to "[t]ake necessary and proper measures to prevent argumentative, repetitious or cumulative cross-examination," (10 CFR §2.757(c)) and to "[i]mpose such time limitations on arguments as [it] determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved." (10 CFR §2.757(d)). Consistent with this authority, the Board may "halt immediately cross-examination which manifestly is making no contribution to the ventilation of the issues in contest but, rather, is productive simply of delay and an unduly encumbered record." Northern States Power Company (Prairie Island Units 1 and 2), ALAB-244, 8 AEC 857, 868 (1974). Ultimately, the Board must determine whether cross-examination is relevant and is assisting the development of a sound record on the issues before it. (Id. at 869); Administrative Procedure Act, §7(c), 5 USC §556(d).

The necessity for Licensing Board action imposing reasonable limitations on cross-examination was apparent almost from the outset. Applicant and Staff witnesses addressing the viability of the Allens Creek cooling lake were cross-examined for well over a week by a rotating battery of intervenors who attended the hearings on a sporadic basis. (Tr. 2521-4365, Tr. 4499-4519, 4701-5096).*/ This process resulted in an intolerable

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*/ A review of this incredibily long (and largely useless) record demonstrates what might have continued to occur had the Board not stepped in to impose reasonable limitations on intervenor cross-examination, and supports the Board's subsequent actions in this regard.

amount of repetitious cross-examination since intervenors made no meaningful effort to coordinate their activities.

Intervenors in this proceeding have failed to recognize that their party status carries with it, not only the rights afforded parties under the NRC's rules of practice, but also the obligations which those rules impose. Offshore Power Systems (Manufacturing License for Floating Nuclear Power Plants), LBP-75-67, 2 NRC 813, 815 (1975). One such obligation is to attend the evidentiary hearings or risk losing the right to contest a particular issue. (10 CFR §2.707). As the Appeal Board has stated " . . . intervention in an NRC adjudicatory proceeding does not carry with it a license to step into and out of the consideration of a particular issue at will." Northern States Power Company (Prairie Island Units 1 and 2), ALAB-288, 2 NRC 390, 393 (1975). As Applicant discusses below, many of TexPirg's own citations to the record support the Board's decision to take actions now complained of by TexPirg.

A. TexPirg's citations to the record do not support its allegation that the Board required "all parties be present at all times in the hearing or lose their rights," for at the time TexPirg's motion was prepared, the Board had imposed no such requirement. At Tr. 2738, the Board noted that the NRC's rules of practice require intervenors to be present during all hearing sessions but that the Board, in deference to the intervenors in

this proceeding, was not insisting on full attendance. The Board admonished, however, that it was concerned about the quality of the record and the large amount of wasted time due to repeated asked and answered objections. In light of these problems, intervenors were put on notice that the Board was considering imposing strict attendance requirements. (Tr. 4116; Tr. 5712-13, Tr. 5781). Ultimately, after finding that intervenors had abused the Board's more liberal attempts to rein-in the scope of cross-examination, the Board did impose an attendance requirement on all parties who wish to cross-examine a particular witness. (Tr. 5973-77).*/

B. TexPirg argues (Motion, p. 2) that the Board has improperly limited the scope of intervenor cross-examination by restricting cross to "the literal direct testimony instead of the scope of the contention." Under the Federal Rules of Evidence (Fed. R. Evid. 611(b)) and the Commission's rules of practice (Prairie Island, ALAB-244, 8 AEC at 867, affirmed, 1 NRC 1 (1975)), cross-examination is normally limited to the scope of the witness's direct testimony. The Board has applied this

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*/ TexPirg further asserts (Motion, p. 2) that the Board should have allowed intervenors to arrange among themselves the order of their cross-examination, without regard to prior attendance. As stated above, however, the Board has already ruled that that procedure burdens the record with numerous objections and unduly delays the proceeding.

rule liberally throughout this proceeding and has often permitted cross-examination of matters which are within the scope of the contention, even if those matters were not specifically addressed in the witness's testimony. (E.g., Tr. 2821, Tr. 2789).

TexPirg also argues, somewhat inconsistently (Motion, p. 2), that the Board restricted the scope of cross-examination by limiting TexPirg to the "literal basis mentioned in the contention." This further argument, that the Board has confused the "substance" and "bases" of its contentions, was raised earlier with regard to TexPirg's cooling lake contention and as the Board already explained (Tr. 2786-88, Tr. 2928-30, Tr. 5010-11), this contention is bounded by the five discrete allegations contained in its subparts (a) through (e).

The truth is, TexPirg has never adopted a consistent position on the scope of permissible cross-examination in this proceeding. A review of transcript pages 2781-88 and 2934-37, cited by TexPirg, reveals that TexPirg's counsel repeatedly sought to cross-examine on matters beyond the witness's testimony and the contention being addressed. In fact, counsel admitted this when he argued to the Board at Tr. 2935-37 that he had the right to cross-examine Applicant's witness Schlicht on any matters relevant to the "overall decision as to whether or not this project meets NEPA requirements." The Appeal Board has ruled that cross-examination may not be employed to expand the number or boundaries of the contested issues. (ALAB-244, 8 AEC at 867, 870).

C. TexPirg claims that the Board prevented effective cross-examination by demanding that a "cross-examiner tell the witness what his goal was." TexPirg's own citations to the record demonstrate, however, that the Board's actions were consistent with its responsibility to prevent "repetitious and cumulative cross-examination," and to prevent counsel from wandering into pointless areas of cross-examination.

At Tr. 4102, Staff counsel requested the Board to ascertain from Mr. Scott the purpose of a long and seemingly irrelevant line of questioning in which Mr. Scott had apparently attempted to dissect, for the record, the Staff's calculation of the "turnover time" for water in the cooling lake. This line of questioning had proceeded for a long period of time without any point being made before Staff counsel interjected to determine the purpose of counsel's questions. A fair reading of the record leading up to Staff's interjection at Tr. 4102 supports the Board's decision to elicit from Mr. Scott the purpose of his line of questions. It is equally clear from Mr. Scott's response and the ensuing conversation at Tr. 4103-4106 that Mr. Scott's alleged goal was not being accomplished by this line of questions and that the Board's interruption prevented him from wasting a large block of time. Applicant would also note that Mr. Scott did not even attempt to resume pursuit of his alleged goal when he commenced cross-examination of Dr. Gotchy at Tr. 4126, even though the Board had permitted him to so proceed. (Tr. 4106).

At Tr. 4944-54, the Board ruled that the relationship between water depth and spawning habitat had already been established on the record and requested Mr. Scott to explain what additional information he wished to elicit for the record that would not be cumulative and repetitious. Mr. Scott refused to do this, claiming again that he did not wish to divulge the purpose of his questions. When cross-examination proceeded again at Tr. 4160 (Mr. Scott's cross-examination had been limited, but he was not required to divulge the purpose of this line of questioning) he commenced to wander from subject to subject without establishing the point of his continued questioning. By Tr. 4168 Mr. Scott had quietly left this subject without making any point or reaching any conclusion.

In Applicant's view these portions of the transcript, cited by TexPirg, typify the quality of cross-examination and demonstrate why the Board's interruptions were necessary.*/ In sum, the record fully supports the Board's requirement, at various times, that counsel divulge the purpose of his long lines of cross-examination.

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*/ At Tr. 3144, also cited by TexPirg, the Board interposed to prevent Mr. Scott from entering into an argument with Applicant's witness Schlicht. Judge Linenberger suggested that Mr. Scott ask a direct question of the witness, which he did, and subsequently Mr. Scott received a full and responsive answer. Applicant cannot perceive any prejudice to TexPirg from the Board's interruption.

D. TexPirg alleges that on several occasions the Board refused to allow counsel to continue cross-examination even though counsel stated that he had more questions to pursue. TexPirg explains that "the Board and witnesses did not expect to be cross-examined by an attorney with a M.S. in nuclear physics and B.S. in Physics, Chemistry, and Math who had read the complete ER and FES." (Motion, pp. 2-3). The implication of this statement is that either the Board did not understand the value of Mr. Scott's questioning or that it purposely limited TexPirg's cross-examination in order to protect Applicant's witnesses.*/ Neither interpretation is supported by the record. That record shows that cross-examination was repetitive, poorly prepared and often pointless. The Board so found (Tr. 6298-99), and it was completely justified in setting limitations on this party's right to cross-examine.

E. TexPirg claims that the Board improperly applied the Appeal Board's decision in Prairie Island (ALAB-244) to prevent intervenor Rentfro from cross-examining on contentions other

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*/ Later in its Motion, TexPirg alleges that "the Board, especially Dr. Linenberger" interrupted TexPirg's cross-examination at "critical times" and asked questions which permitted the witness to change an answer and "reduce the damage" inflicted during prior cross-examination. TexPirg has not supported this allegation by citation to the record and indeed it cannot.

than his one admitted contention regarding the health effects of high voltage transmission lines. However, TexPirg has misconstrued both the Licensing Board's ruling in this case and the ruling in ALAB-244. As the transcript makes clear (Tr. 3843-46), the Board did not hold that Prairie Island prevents an intervenor from cross-examining on another party's contentions, but rather applied a portion of the Prairie Island rule which prevents such cross-examination unless an intervenor has a "discernable interest" in the contention on which he wishes to cross-examine. (8 AEC at 868 and n. 15). Since the statement of interest in Mr. Rentfro's petition to intervene only discusses the proximity of high voltage transmission lines to his residence, the Board properly refused to permit him to cross-examine Applicant's witness on the effects of heavy metals in the Allens Creek cooling lake. The Board explained on the record that this holding was directed only to Mr. Rentfro and that it was based on the narrowness of his petition to intervene. (Tr. 3846). TexPirg's argument is legally and factually flawed and should be rejected by the Board.

IV. Other Allegations of Board Error

TexPirg's Motion also contains assertions of alleged Board error with regard to rulings other than those limiting cross-examination.

A. TexPirg claims that "the Board specifically refused to hold some night and week-end sessions" to allow intervenors more input into the hearing process. TexPirg's own citation to the record demonstrates, however, that the Board's position has been misrepresented. At transcript pages 2462 through 2464 the Board expressly stated that it would be "more than willing to accommodate counsel" if an agreement were reached among the parties to hold such special sessions. Mr. Scott responded that he couldn't "ask anymore" from the Board. At no subsequent time has he approached Applicant's counsel requesting such a special session. The Board's position on holding extra sessions is perfectly clear in the record and that record does not support TexPirg's allegation. (Tr. 6168-69).

B. TexPirg claims that (1) by refusing to permit Mr. Rentfro to engage in cross-examination, (2) by working through lunch, (3) by dismissing two witnesses, and (4) by closing the hearing on Friday, the Board wrongly denied the right to cross-examine Applicant's witnesses to intervenors who appeared later in the day. Again, TexPirg has mischaracterized the Board's actions. The record simply does not support TexPirg's implication that the Board rushed witnesses off the stand to prevent further cross-examination.

As the record reflects, the Board had scheduled the completion of cross-examination of Applicant witnesses for

that Friday, and TexPirg's counsel knew the schedule when he left the hearing room on Thursday evening. (Tr. 3735). Counsel also knew that if he, or any other intervenor, failed to appear for cross-examination before the Board was ready to dismiss a witness, that intervenor would forfeit his/her right to engage in cross-examination of that witness. By failing to appear during the morning session on January 23, at which time all other cross-examination and Board questioning of these witnesses was completed, Mr. Scott, Ms. McCorkle and Mr. Bishop simply waived their right to cross-examine. This occurrence, in fact, demonstrates the kind of conduct which ultimately led the Board to impose a strict attendance requirement.

C. Finally, TexPirg asserts that the Board permitted the Applicant and Staff to introduce into evidence the Environmental Report Supplement (ER Supplement) and Final Supplement to the Final Environmental Statement (FSFES) when TexPirg's counsel was not present in the hearing room thereby preventing counsel from cross-examining those persons who wrote various sections of those documents.

The record will reflect that the scheduled witnesses for Friday, January 23, were completed earlier than scheduled. Applicant's counsel informed the Board that Applicant's witness sponsoring the ER Supplement had been waiting in the hearing

room for several days and that Applicant wished to introduce that document into the record. Staff's witness sponsoring the FSFES was also available and therefore Staff requested to introduce that document following the Applicant's presentation. TexPirg implies that the Board is somehow to blame for allowing this to occur. In Applicant's view, if Mr. Scott prejudiced the interests of his client by failing to attend the hearing, the responsibility is his and not the Board's.

In addition, TexPirg does not appear to have familiarized itself with the applicable law regarding the introduction of licensing documents in NRC construction permit and operating license proceedings. Boston Edison Company (Pilgrim Nuclear Station, Unit 1), ALAB-83, 5 AEC 354, 369-70 (1972). TexPirg's motion makes clear that counsel wanted to test the knowledge of Applicant's and Staff's sponsoring witnesses on every matter contained in these documents, but the Pilgrim decision makes clear that such knowledge is not required, and that the admissibility of such documents is established by their identification in the record. Of course, as the Board has already ruled, to the extent any Staff or Applicant witness relies in his testimony on statements in the ER Supplement or the FSFES, that witness may be cross-examined on the accuracy and validity of those statements. (See Tr. 2934-37, Tr. 3170-75).

V. Referral and Certification Under Sections 2.730(f) and 2.718(i).

The Commission's regulations set forth in 10 CFR §2.730(f) proscribe interlocutory appeals to the Appeal Board except in cases where the Licensing Board in its discretion determines that a prompt review of its ruling "is necessary to prevent detriment to the public interest or unusual delay or expense. . . ."*/ If the Board makes such a determination, it may refer its ruling to the Appeal Board for decision.**/ No specific criteria for certification are set forth in the provisions of §2.718(i), but the standards under this section are no less than those for referral. Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 483 (1975).

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*/ If the Board has issued a ruling on a particular issue, referral under §2.730(f) is the proper procedure rather than certification under §2.718(i). Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-152, 6 AEC 816, 818, n. 6 (1973).

**/ The Appeal Board may refuse to accept a referral from the Licensing Board where there has been no strong showing that §2.730(f) criteria have been met. See, e.g., Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-438, 6 NRC 638 (1977); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2) ALAB-405, 5 NRC 1190, 1191 (1977); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-293, 2 NRC 660 (1975).

The general policy of the Commission, however, does not favor certification of an issue during the pendency of a proceeding, Id. at 483, and certification is the exception and not the rule, Toledo Edison Company, et al. (Davis-Besse Nuclear Power Station), ALAB-300, 2 NRC 752, 759 (1975).

Moreover, the Appeal Board has made it clear that it will undertake discretionary interlocutory review only sparingly, and only if the Licensing Board's ruling

> (a) threatens the party adversely affected with immediate and serious irreparable harm which could not be remedied by a late appeal or (b) affects the basic structure of the proceeding in a pervasive or unusual manner.

Pennsylvania Power & Light Co. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-593, 11 NRC 761, 762 (1980); Accord, Public Service Co. of Indiana (Marble Hill, Units 1 and 2), ALAB-405, 5 NRC 1190, 1192 (1977). See, Houston Lighting & Power Company (South Texas Project, Units 1 and 2), ALAB-608, 12 NRC 168, 169 (1980).

TexPirg has failed to demonstrate that referral or certification of its seven questions is warranted under the criteria of §§2.730(f) or 2.718(i). On page 6 of its motion, TexPirg lists seven questions which it seeks to have reviewed by the Appeal Board. However, TexPirg never addresses the criteria for referral or certification of its seven questions to the Appeal Board. The only justification provided by TexPirg

to support its request for interlocutory review is TexPirg's belief that the Licensing Board has committed "reversible error." TexPirg states that the Licensing Board should correct its errors "or refer its ruling to the Appeal Board so they can promptly set the standards to be used in this proceeding." (Motion, p. 4). This conclusory statement hardly provides an adequate basis to justify an exception to the rule prohibiting interlocutory appeals.

The Appeal Board has made it clear that its role is not to monitor a Licensing Board's ruling on what evidence is admissible and in what "procedural framework it may be adduced." Toledo Edison Company (Davis-Besse Nuclear Power Station, Unit 1), ALAB-314, 3 NRC 98, 99 (1976). In that case, the Appeal Board noted that during the course of a proceeding

> a licensing board almost inevitably will be called upon to make numerous determinations respecting what evidence is permissible and in what procedural framework it may be adduced. Were we to allow ourselves to be cast in the role of a day-to-day monitor of those determinations, we would have little time for anything else.

Id. at 99. A brief look at each of the questions raised by TexPirg will show that all fall within this category; none are appropriate for referral or certification to the Appeal Board.

In question 1, TexPirg raises the issue of whether the Licensing Board can stop cross-examination "even though 2.757 has not been violated?" This question is stated in the

abstract without any reference to specific rulings made by the Licensing Board. Second, to the extent TexPirg refers to rulings made by the Licensing Board with respect to other parties, TexPirg has no standing to raise the grievances of other parties who are not represented by TexPirg. Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-631, ____ NRC ____ (Slip op. at 3-4, February 4, 1981). Finally and most importantly, 10 CFR §2.757(c) authorizes the Licensing Board to "[t]ake necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination." As we have discussed above, the Licensing Board was totally justified, in the circumstances of this case, in exercising its discretion to stop such cross-examination. Accordingly, TexPirg's question does not warrant Appeal Board review.

In question 2, TexPirg raises the issue of whether the ASLB "improperly stopped TexPirg from cross-examination." Again, as discussed above, the Licensing Board was more than justified, in the exercise of its discretion under §2.757, in placing reasonable limits on TexPirg's repetitious cross-examination. Nothing in TexPirg's motion demonstrates that the Board in any way abused its discretion with respect to TexPirg's right of cross-examination. Accordingly, Appeal Board review is not warranted.

In question 3, TexPirg raises the issue of the Board's ruling with respect to cross-examination by Intervenor Rentfro on another intervenor's contention. This question is not appropriate for referral or certification since the Appeal Board has previously ruled that the Licensing Board's ruling with respect to Mr. Rentfro's cross-examination "is scarcely worthy of our interlocutory examination." See Allens Creek, Appeal Board Memorandum and Order dated February 5, 1981.

In question 4, TexPirg complains of various procedural rulings made by the Licensing Board during the absence of TexPirg's counsel. As discussed above, the Board acted in a more than reasonable manner with respect to the scheduling and dismissal of witnesses. TexPirg's complaint arises as a direct result of its own choice in not attending the evidentiary hearing. Accordingly, this question does not warrant certification or referral to the Appeal Board.

In question 5, TexPirg questions whether the ASLB properly allowed the introduction into evidence of the ER Supplement and FSFES without making available for cross-examination those persons who prepared the document. This is exactly the type of question relating to the admissibility of evidence which the Appeal Board in Toledo Edison, supra, stated did not

warrant interlocutory review. Applicant and Staff documents, as we have discussed above, were properly received into evidence by the Board in accordance with the long standing practice of this agency and Board decisions. (ALAB-83, 5 AEC at 369-70). Moreover, TexPirg has not shown how it has been prejudiced by the Board's ruling since both Applicant and Staff have provided witnesses on all of TexPirg's contentions relating to these documents. TexPirg has provided no basis to justify referral or certification of this question to the Appeal Board.

In question 6, TexPirg requests that new members of the Licensing Board be appointed or that the Appeal Board provide some unspecified "firm direction" to the Licensing Board. Neither of these requests is appropriate for interlocutory review. First, TexPirg's request for some undefined "firm direction" by the Appeal Board is much too vague to provide an independent basis for referral or certification. Second, the Appeal Board has already ruled that the question of replacement of the Licensing Board members is not appropriate for consideration by the Appeal Board at this time. The Commission's regulations (10 CFR §2.704(c)) require that a motion to disqualify members of a Licensing Board must be supported by an affidavit "setting forth the alleged grounds for disqualification." This procedure must be strictly followed. (ALAB-630, Slip op. at 3). TexPirg has not filed such an affidavit nor has it set forth any

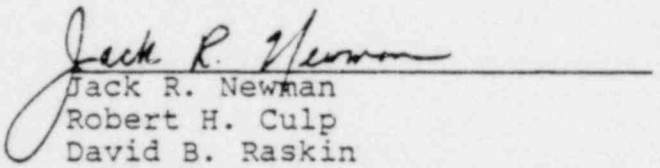
good cause whatsoever for disqualification of the present Board members. Accordingly, there is no basis for referral or certification of this question to the Appeal Board at this time.

In question 7, TexPirg asks whether the evidentiary hearing should be delayed until the above six questions are answered by the Appeal Board. Since none of the six questions are appropriate for referral or certification, obviously this question need not be considered by the Board.

VI. Conclusion

For all of the foregoing reasons, Applicant believes the Board should deny each of TexPirg's requests for reconsideration of Board rulings. In addition, the Board should deny TexPirg's request for referral or certification of various issues to the Appeal Board.

Respectfully submitted,



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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In the Matter of	§	
	§	
HOUSTON LIGHTING & POWER COMPANY	§	Docket No. 50-466
	§	
(Allens Creek Nuclear Generating Station, Unit 1)	§	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicant's Response to TexPirg's Motion for Reconsideration of Various Rulings During Evidentiary Hearings, and for Certification of Various Issues to the Appeal Board in the above-captioned proceeding were served on the following by deposit in the United States mail, postage prepaid, or by hand-delivery this 4th day of March, 1981.

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