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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Atomic Safety and Licensing Board

Before Administrative Judges:
Sheldon J. Wolfe, Chairman
Dr. E. Leonard Cheatum
Gustave A. Linenberger, Jr.

DOCKETED
MAY 5 1981
Office of the Secretary
Docketing & Service
Branch

SERVED MAY 5 1981

In the Matter of	
HOUSTON LIGHTING AND POWER COMPANY	Docket No. 50-466 CP
(Allens Creek Nuclear Generating Station, Unit 1	May 4, 1981

MEMORANDUM AND ORDER
(Denying Tex Pirg's Motions for Reconsideration, Designation of New Board, Interlocutory Appeal, and Certification of Questions)

On January 29, 1981, Intervenor Tex Pirg filed consolidated motions[1/] requesting that this Board (1) reconsider certain rulings made during the week of January 18 to January 24 which restricted the right of intervenors to cross-examine, (2) refer these rulings pursuant to the interlocutory appeals provisions of § 2.730(f), and (3) certify certain

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1/ Therein, Tex Pirg also requested that the Appeal Board direct certification of questions related to restrictions on cross-examination, order that the hearing be halted pending the outcome of the appellate review, and direct that the composition of the Licensing Board be changed. In a Memorandum and Order, ALAB-630, 13 NRC ___ (February 3, 1981), the Appeal Board stated that (a) it disapproved "of the practice of simultaneously seeking Licensing Board reconsideration of interlocutory rulings and appellate review of the same rulings", (b) if dissatisfied with the Licensing Board's disposition of its motion for reconsideration, Tex Pirg may file a petition for directed certification, (c) Tex Pirg should bear in mind the Appeal Board's disinclination to assume the role of day-to-day monitoring of Licensing Boards' rulings, and that (d) a motion to remove one or more members of a licensing board must be first presented to that board in strict conformity with § 2.704(c).

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questions pursuant to § 2.718(i). Tex Pirg also requests that a new Board be designated to hear this case. During the evidentiary hearing, on February 5, 1981, the Board denied, inter alia, the motion for reconsideration without prejudice, allowing Tex Pirg time within which to resubmit its motion with specific citations to the record and granted time to the parties to respond to any resubmission (Tr. 4807-13). On February 17, 1981, Tex Pirg resubmitted its original pleading which contained various inserted handwritten record citations and a few textual changes, [2] On March 4 and March 13, 1981 respectively, the Applicant, and the Staff filed responses in opposition.[3]

MEMORANDUM[4]

Re: The Motion for Reconsideration of the Board's rulings between January 15 and February 9, 1981 which, Tex Pirg alleges, improperly limited the scope and extent of cross-examination and improperly imposed attendance requirements upon intervenors who desired to cross-examine.

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[2] We note that, while Tex Pirg's original pleading of January 29, 1981 complained about various Board rulings made during the week-day sessions between January 19 and January 23, 1981, some of the citations to the record in its resubmission relate to certain rulings which were made prior to and subsequent to that time frame.

[3] Meantime, in a Memorandum and Order issued on February 23, 1981 the Appeal Board stated that, insofar as Tex Pirg's resubmission was addressed to it, such an endeavor still must be rejected as premature.

[4] Hopefully, in the future, Tex Pirg and other intervenors will heed the ruling in ALAB-631, 13 NRC ___ (February 4, 1981) - that an intervenor has no standing to press the grievances of other parties who are not represented by him and that he is not entitled to complain himself of a licensing board ruling unless and until that ruling has worked a concrete injury to his personal interests. While several of Tex Pirg's complaints could be summarily rejected in light of this ruling, we discuss them in order to show their complete lack of merit.

1. Citing the record for the period between January 15 and February 9, 1981, Tex Pirg asserts that the Board required that all parties had to be present at all times or lose their rights of cross-examination. Further, it asserts that the Board refused to accommodate the intervenors by refusing to hold night and week end sessions. These allegations are simply not supported by Tex Pirg's citations to the record. At Tr. 2738-39 (1/19/81), the Board reiterated its prior ruling at Tr. 2460-62 (1/15/81) - viz., that intervenors' cross-examination would proceed alphabetically but that, if an intervenor appeared out-of-alphabetical sequence, he would be permitted to cross-examine, provided the witness had not been excused; however, if an intervenor appeared after the witness had been excused, the intervenor would be deemed to have waived his right of cross-examination. The Board also noted that an intervenor, in not attending the hearings, assumed the risk of being uninformed about procedures, and about the content of and the status of cross-examination. Finally, we noted that, while an intervenor, as a party, has an obligation to be present at all times, we were not insisting on full-time attendance by intervenors in an effort to be as indulgent and as fair as possible. The balance of Tex Pirg's citations to the record do not evidence either that we required that intervenors be present at all times or that we denied cross-examination to any intervenor because he had failed to attend the hearing sessions at all times (Tr. 3101, 3229, 3238-39, 3305, 3322-25, 4116, 5141-43).

Repeatedly, the Board warned that it might have to tighten up its ruling upon attendance requirements (Tr. 3755, 3857-58, 4116-17, 5713-15, 5781). Ultimately, on February 12, 1981, we did impose a stricter attendance requirement because the last minute appearances of intervenors

for cross-examination had impaired scheduling of witnesses, resulted in numerous "asked and answered" objections and attendant delays, required the Board to repeat rulings for the benefit of intervenors who had not been present when the original rulings were made, and precluded them from becoming fully knowledgeable about the content of prior cross-examination and about the nature of the hearing process. The Board ruled that intervenors must be present at the beginning of any cross-examination and remain in the hearing room until completion of their own cross-examination, and that cross-examination would be conducted alphabetically, as it had been in the past. The Board stated that exceptions to this ruling would not be entertained - that if an intervenor found that he could not attend a session, his recourse would be to ask another intervenor to ask his questions upon cross-examination, and that his substitute would be responsible for culling out those questions that had been previously asked and answered and/or would result in cumulative testimony (Tr. 5974-77). Upon inquiry by Tex Pirg's counsel, the Board advised that intervenors could agree between themselves at a particular session that a certain intervenor would cross-examine out-of-alphabetical sequence (Tr. 6170), but the Board stated that such agreements must be timely brought to its attention before cross-examination began (Tr. 6234). Obviously, this stricter ruling does not require that an intervenor has to be present at all times at the hearing (on a daily basis) in order to be permitted to cross-examine upon discrete contentions in which he is interested. However, as discussed above, for the adjudicatory process to work, if an intervenor desires to conduct cross-examination upon <u>all</u> contentions, then he must be present for all cross-examination prior to his own.

With respect to the allegation that the Board restricted participation by intervenors in refusing to hold night and weekend sessions, Tex Pirg's own citation to the record belies this allegation. At Tr. 2462-64 (1/15/81), after Tex Pirg's counsel requested that some night and weekend sessions be held in lieu of previously scheduled 9:00 a.m. to 5:00 p.m. sessions, the Board stated that it would be "more than willing to accommodate counsel" if an agreement was reached regarding special sessions. Tex Pirg's counsel responded that he could not ask any more. Applicant's counsel advises that at no subsequent time did Tex Pirg's counsel approach him to request such a special session (Applicant's Response, p. 14), and no such an agreement was ever presented to this Board.

2. Tex Pirg asserts that "The Board refuses to let intervenors arrange between themselves so that one intervenor can do their cross-examination by another intervenor stopping their cross-examination then starting up again at a later time. Most of the intervenors will not be able to sit for hours or even days awaiting their chance to ask a few questions". (Tex Pirg Motion, p. 2). The first sentence is so garbled as to defy comprehension. However, after reading the cited pages of the transcript and reviewing the section of Tex Pirg's motion captioned "II Actions Requested", the Board concludes that the complaint is that the Board would not allow Tex Pirg's Mr. Scott, who was cross-examining a witness (Dr. Schlicht) to agree that the witness being cross-examined could step down and then be recalled after another intervenor (Mr. Bishop) had

completed cross-examination of a different witness (Dr. Armstrong); and that, as a result, the latter intervenor (Mr. Bishop) was unable to complete his cross-examination. Tex Pirg requests that Mr. Bishop be permitted to finish cross-examination of Dr. Armstrong [Tex Pirg's Motion at p. 5, II 1(f) and (i)]. It ill- behooves Tex Pirg to register such a complaint. The record reflects that, while Tex Pirg's counsel (Mr. Scott) was cross-examining Applicant's expert witness, Dr. Schlicht, Intervenor Bishop appeared (Tr. 3084) and stated he desired to cross-examine Dr. Armstrong immediately upon the assumption that Mr. Scott would not object (Tr. 3097-98). It was Mr. Scott who declined and suggested "what would probably be better, let me go ahead and continue crossing considering the effect I'm having" (Tr. 3099). Thereupon, the Board acceded to Mr. Scott's request that he be allowed to proceed without interruption (Tr. 3099). Subsequently, the Board allowed Mr. Bishop to cross-examine Dr. Armstrong out-of-alphabetical sequence (Tr. 3101),[5/] and before Mr. Scott was to have commenced cross-examination of the Applicant's two other expert witnesses on the panel, Drs. Tischler and Armstrong (Tr. 3147). Mr. Bishop proceeded to cross-examine Dr. Armstrong until the hearing was recessed for the day (Tr. 3147-3221). Mr. Bishop did not appear to resume cross-examination when Dr. Armstrong, who had been temporarily excused, took the stand (Tr. 3499-3636, 3666-3732). We have no recollection that we have ever refused an intervenor's unopposed request

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[5/] Other than Tex Pirg's reference to Tr. 3101, none of the balance of its record citations (3238-3239, 3938, 3949, 4000) relate to or support its complaint.

to interrupt another intervenor's cross-examination in order to proceed with his own cross-examination.

3. Tex Pirg asserts that on two occasions the Board improperly sustained objections to questions upon cross-examination on the ground that the questions went beyond the scope of the direct testimony and of the contention itself. We have reviewed the transcript (pp. 2781-89, pp. 2933-37). Therein we ruled that cross-examination upon the number of persons that might visit the park and cooling lake was impermissible since the questioning went beyond the scope of the direct testimony of Dr. Schlicht (fol. Tr. 2513) and beyond the boundaries of the contention (see pp. 4-5 of Schlicht testimony). We further ruled that cross-examination upon the existence of irregularities on the bottom of the lake, upon siltation and upon a possible inadequacy of oxygen was impermissible for the same reasons. Moreover, we note that during the prehearing conference on August 13, 1980, upon being advised by Tex Pirg's counsel that he intended to move to amend a substantial number of Tex Pirg's contentions and that possibly he would also move to amend the pleadings of other intervenors, the Board stated that each intervenor would have to move to amend his own contentions. (Tr. 1771-72) (see also Tr. 5010-11). Thereafter, Tex Pirg did not move to amend its Contentions 2 and 4 to assert additionally that the smaller size and changed location would render the lake useless as a viable recreational fishery because of (f) irregularities on the bottom of the lake, (g) siltation and (h) reduction

of oxygen. We affirm the two rulings sustaining the objections. Cross-examination should be strictly limited to the scope of the direct examination of that witness and may not be employed to expand the number or boundaries of the contested issues. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 867, aff'd, 1 NRC 1 (1975).

4. Citing the transcript, Tex Pirg asserts that the Board refused to allow complete and thorough cross-examination because it demanded that Tex Pirg's counsel, during the course of cross-examination, reveal the goal to the witness who, being alerted, could answer in a manner defeating the purpose of the question and because, upon three occasions, it would not permit Tex Pirg's counsel to continue cross-examination of Drs. Schlicht, Armstrong and Sanders.[6/]

With respect to the first complaint, the Board did not direct that Tex Pirg's counsel explain the purpose of his question at transcript pages 3143-44. In responding to Applicant's counsel's objection that he was arguing with the witness, Mr. Scott volunteered the purpose of his

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[6/] These two complaints were set forth in paragraphs (a) and (c) of Tex Pirg's Motion. Contrary to the Board's ruling on February 5, 1981 (Tr. 4812), Tex Pirg did not cite the record in support of complaints (b) and (d). We conclude that the latter two complaints have been abandoned, and, in any event, we are not disposed to comb the record upon Mr. Scott's behalf.

question. Thereupon, The Board merely suggested that Mr. Scott sharpen his question. However, at transcript pages 4101-03, we did direct that Mr. Scott explain the purpose of his line of questioning, which was unclear. After Mr. Scott explained his purpose (Tr. 4104-05), the Board permitted him to proceed (Tr. 4106), but he did not resume this line of questioning (Tr. 4124-4208). Since, without explanation, the purpose of this line of questioning was unclear, there is no merit to this complaint. Finally, upon objections by Applicant's and Staff's counsels that cross-examination upon spawning depth was repetitious and cumulative, the Board directed that Mr. Scott explain what he was attempting to establish that had not already been spread on the record (Tr. 4950-54). However, after listening to further arguments, the Board limited cross-examination to two hours but did not thereafter require that Mr. Scott reveal the purpose or goal of this line of questioning (Tr. 4958-59). Once again, there is no merit to this first complaint. In any event, even though the complaint is without substance, the Appeal Board has held that, in order to preclude or limit irrelevant, repetitious or valueless cross-examination, a board may insist upon an advance indication respecting what the intervenor will attempt to demonstrate or ascertain by his interrogation. Prairie Island, supra, pp. 868-69.

Tex Pirg's second complaint is without merit.[7/] After

[7/] Tex Pirg's citation to the record (Tr.3730-40) does not reflect any ruling limiting or terminating cross-examination.

Dr. Schlicht testified that he was not knowledgeable in the chemistry of heavy metals and repeatedly stated that another panel member, Dr. Tischler, was the expert to whom such questions should be posed, the Board terminated that line of cross-examination (Tr. 3608-83; Schlicht test. fol. Tr. 2513, at pp. 27-28). Thus, Mr. Scott's cross-examination was misdirected and made no contribution to the record. Further, at beginning of his cross-examination of Dr. Sanders, we warned Mr. Scott that, because prior cross-examination upon Tex Pirg's Contentions 2 and 4 had been exhaustive, we might limit cross-examination at the end of two hours (Tr. 4884). At the conclusion of the two hours, deciding that his cross-examination had been cumulative and repetitious, the Board ruled that he must complete within two hours (Tr. 4958-59). Two hours later, finding that the questioning had been repetitious, cumulative and nonproductive, the Board terminated Mr. Scott's cross-examination of Dr. Sanders (Tr. 5051). Thereafter, the Board limited Mr. Scott's cross-examination upon Board questions (Tr. 5072, 5088) and ultimately terminated it because, as the record reflects, the cross-examination went beyond the scope of the Board's questions (Tr. 5096). Upon our review of the record, and since Mr. Scott did not explain wherein the Board's rulings were erroneous and did not support his barren allegation of bias, we affirm our rulings. As the Appeal Board stated in Prairie Island, supra, p. 868:

> We have already noted that a licensing board has the power to insure that cross-examination is kept within proper bounds insofar as scope is concerned.

> In addition, the board has been explicitly authorized, in the interest of "prevent[ing] unnecessary delays or an unnecessarily large record," to "[t]ake necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination." 10 C.F.R. 2.757(c). This authority, coupled with the general power to "[r]egulate the course of the hearing" [10 C.F.R. 2.718(e)], should be sufficient to enable the board to 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...

5. Tex Pirg asserts that on January 23, 1981, the Board improperly applied the Appeal Board's decision in Prairie Island, supra, in denying Intervenor Rentfro the right to conduct even limited cross-examination upon Tex Pirg's Contentions 2 and 4. These contentions alleged that the reduction in the size of and the changed location of the cooling lake would render it useless as a viable recreational fishery (Tr. 3840-49). Tex Pirg misconstrues both our ruling and that of the Appeal Board in Prairie Island. We did not rule that Prairie Island precludes an intervenor from cross-examining upon another party's contentions. We did rule that, in light of Prairie Island at page 868, n. 15, Mr. Rentfro did not have a discernible interest in the resolution of the cooling lake contentions because his interest related solely to the health impacts of high voltage transmission lines proximate to his residence (see Rentfro Petition for Leave to Intervene of August 8, 1978, as amended on September 22, 1978; see also Memorandum and Order of April 11, 1979, at p. 5). Accordingly, we did not permit Mr. Rentfro to cross-examine Applicant's witnesses

(Drs. Tischler and Schlicht) upon the cooling lake contentions. We explained that our ruling applied only to Mr. Rentfro because of his restricted discernible interest, and that, if the question arose again, "we will just have to rule on a party by party basis". This question has not arisen since our ruling and intervenors have proceeded to cross-examine upon other intervenors' contentions. Tex Pirg's complaint is without merit.

As a follow-on complaint, Tex Pirg asserts that on January 23, 1981, (1) by wrongfully refusing to permit Mr. Rentfro's cross-examination, (2) by proceeding through the luncheon break, (3) by dismissing Applicant's witnesses (Drs. Tischler and Schlicht), and (4) by recessing the hearing at 1:15 p.m. until February 2, 1981, the Board wrongfully denied the rights of Ms. McCorkle and Mr. Bishop to cross-examine Drs. Schlicht and Tischler and of Tex Pirg's Mr. Scott to cross-examine Dr. Tischler. Said Intervenors, according to Tex Pirg, appeared for the afternoon session sometime after 1:15 p.m.

As background, we note that on January 15, 1981, the day before the full-scale evidentiary hearing began, during discussions leading to the Board's initial ruling that cross-examination should proceed alphabetically but that an intervenor appearing out-of-alphabetical sequence before the dismissal of the witness would be permitted to cross-examine, Mr. Scott stated that "I am not suggesting and did not suggest that [a party's witness presenting direct testimony] should wait around if there's no

intervenor here to cross-examine" (Tr. 2459). Further, on January 19, 1981, the Board reiterated its ruling and stated at pp. 2738-39 of the transcript:

> ...An Intervenor takes his chances in not attending these hearings and becoming knowledgeable about the procedures and becoming knowledgeable about the testimony and about the cross-examination and keeping a finger on the pulse of these proceedings.
>
> We are trying to be as indulgent and as fair as we can to all parties, and particularly as to the intervenors. The Intervenors, as you know, have an obligation as a party to be present at all times. But we're not insisting on that.
>
> But we have said that if an Intervenor is not here before cross-examination is completed, that Intervenor waives its right to cross-examination.
>
> So it's up to the Intervenors to come in, to contact other parties, to inquire as to how the proceedings are going; and if they are not here in a timely manner, they will waive their right of cross-examination.
>
> So the Board will not take any further steps along those lines. You proceed at your risk.
>
> And all Intervenors should take precautionary measures to make their own inquiry. In other words, you can't foist this responsibility on the Board. It's your responsibility and not the Board's, for you to find out what the status of cross-examination is.

Thereafter, on January 22, 1981, having completed his cross-examination of Dr. Schlicht, one of Applicant's three panel witnesses, Mr. Scott stated that, rather than cross-examining Drs. Armstrong and Tischler at the same time, he would first cross-examine Dr. Armstrong (Tr. 3498-99). After terminating Mr. Scott's cross-examination of Dr. Armstrong at 5:30 p.m. (Tr. 3720), the Board began but did not complete

its questioning of Dr. Armstrong (Tr. 3723-32), who was excused at Applicant's request to return after February 2nd (Tr. 3733). After having been informally advised by Mr. Scott that Intervenors Baker and McCorkle had indicated they planned to attend the hearing session on the next day, the Board announced that the first order of business on January 23rd would be to continue the cross-examination of Dr. Tischler (Tr. 3721, 3735).

At the beginning of the session on January 23rd, the Board announced that, because of its travel plans, it would recess at about 2:30 p.m. rather than at the previously scheduled time of 4:00 p.m. None of the attending intervenors either objected to the early recess (Messrs. Baker and Doherty) (Tr. 3741) or objected to proceeding through the lunch period (Messrs. Baker, Doherty, and Rentfro) (Tr. 3817). The witnesses, Drs. Schlicht and Tischler, were permanently excused after cross-examination and after Board questioning had been completed (Tr. 3850), and the session was concluded at 1:15 p.m.

Neither on its own behalf nor on behalf of Intervenors Bishop and McCorkle can Tex Pirg be heard to fault the Board. Despite the Board's earlier warnings, they negligently failed to appear before the witnesses were dismissed and thus waived their right of cross-examination.[8/]

8/ As indicated above, at the January 22nd session, Mr. Scott informally advised that Intervenors Baker and McCorkle had told him that they expected to appear the following day. The Board replied that he was not authorized to represent that which other intervenors had in mind and again repeated the ruling that intervenors waived their right of cross-examination if they did not appear to cross-examine before the witness was dismissed (Tr. 3721-23).

There is no evidence of record indicating that these three intervenors had made any effort by telephone to determine the status of the proceeding from Messrs. Baker, Doherty or Rentfro. Certainly, these three intervenors did not contact the Board to advise that they would appear later that afternoon. Tex Pirg's counsel's failure to timely appear is even more culpable - he knew that, after having questioned Dr. Armstrong on January 22nd, he was to proceed to cross-examine Dr. Tischler at the commencement of the January 23rd session. A fortiori, there is no merit to this complaint.

As a second follow-up complaint, Mr. Scott asserts that, despite his earlier objections, on January 23, 1981, while he was not in attendance, the Board admitted into evidence the Applicant's Environmental Report Supplements and the Staff's Final Supplement to the Final Environmental Statement and then dismissed the witnesses who had identified these two documents. On January 15, 1981, during a lull in the taking of limited appearance statements, among other preliminary matters, Mr. Scott indicated that he would object to the admissibility of the ER, as supplemented, and of the FSFES on the ground of hearsay. The Board noted that it was not in a position to rule until these documents were tendered as exhibits and until the objectionable portions of those documents were specified. While Applicant was prepared at that time to call as a witness the person responsible for the preparation of the ER, as supplemented, the Staff stated that it intended to offer the FSFES at a later date. However, other matters were brought up by Mr. Scott, and these documents were not tendered at that time (Tr. 2431-39). On Friday, January 16, 1981, Applicant stated

it was prepared either to offer into evidence the ER, as supplemented, or to call its first panel of witnesses. Mr. Scott was not in attendance.[9/] After the Board left that election to Applicant, Applicant chose to call its panel (Tr. 2508-09). Thereafter, on January 23rd, after the Board had permanently dismissed Drs. Schlicht and Tischler, Applicant's counsel stated that he had kept a witness on standby since January 16th in order to secure the admission of the ER, as supplemented. The witness proceeded, inter alia, to identify this document, and, absent objection by Staff, Mr. Rentfro, or Mr. Doherty, it was admitted into evidence (Tr. 3850-53). Staff proceeded to call its witness who, inter alia, identified the FSFES, and it was admitted into evidence absent any objections by Applicant, Mr. Rentfro or Mr. Doherty (Tr. 3867, 3869-70). These two witnesses were excused.

There is no merit to this complaint. As discussed, supra, Tex Pirg's counsel has only himself to blame. Unaccountably he was not in attendance when the January 23rd session commenced even though he knew that he was to proceed with the cross-examination of Dr. Tischler. There is nothing in the record, and he does not allege, that he and the other two

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9/ At the conclusion of the January 16th hearing session, Mr. Doherty advised that Mr. Scott had not been able to attend because of illness (Tr. 2729).

intervenors made any effort to inquire about the status of the proceedings. Neither he nor the other two intervenors contacted the Board to advise that they would attend later in the afternoon. Finally, in any event, the admissibility a document offered by Applicant or Staff into the hearing record need be tested only by its identification as the document prepared pursuant to Comission regulations and submitted to the Commission.[10/] Accord, Boston Edison Company (Pilgrim Nuclear Power, Station), ALAB-83, 5 AEC 354, 369 (1972). Since these documents met this identification test, they were admissible as exhibits. We know of no occasion when we have not permitted Tex Pirg or any other intervenor to challenge the probative value of any specific information in the ER, as supplemented, and in the FSFES which concerned matters in controversy in this hearing.

6. As its final complaint, Tex Pirg asserts that the Board would interrupt Tex Pirg's cross-examination at critical times and ask questions which would alert the witness to either change or clarify a previous answer which had been damaging to Applicant's case. Contrary to our ruling on February 5, 1981, Tex Pirg did not cite the record in support of this complaint, and, accordingly, we conclude that it has abandoned this complaint.

10/ 10 C.F.R § 51.20 requires that each applicant for a construction permit shall submit with its application an Environmental Report and § 51.26 requires that the Staff prepare and distribute a Final Environmental Impact Statement.

Re: Tex Pirg's Motions for Certification of Questions and for Referral of Rulings

Tex Pirg requests that we either certify eleven questions pursuant to 10 CFR § 2.718(i) or refer eleven rulings pursuant to § 2.730(f). However, these questions were subsumed in our rulings and thus only § 2.730(f) is the proper section pursuant to which our rulings may be requested to be referred.[11/] We deny the Motion for Referral because, as discussed above, none of Tex Pirg's complaints are meritorious. Further, Tex Pirg does not address and we perceive no detriment to the public interest. Finally, while Tex Pirg argues that, if there is not a prompt referral, nearly a year will have been wasted before the initial decision can be reversed because of our erroneous rulings, there has been no strong showing that such a delay is indeed "unusual" [Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-438, 6 N.R.C. 638 (1977)], and the proscription against interlocutory appeals in 10 C.F.R. § 2.730(f) may be taken as an at least implicit Commission judgment that, all factors considered, there is warrant to assume the risks which attend a deferral to the time of initial decision of the appellate review of procedural rulings made during the course of trial [Toledo Edison Company, et. al. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-314, 3 NRC 98 (1976)].

11/ Thus, the Motion for Certification of Questions is denied.

Re: The Motion to Designate a New Board

The Board orally denied this motion during the hearing because Tex Pirg did not comply with the requirements of § 2.704(c) - i.e., the motion was not supported by affidavits setting forth the alleged grounds for disqualification. Mr. Scott recognized that the motion was procedurally inadequate. (Tr. 4807, 4868). We herewith affirm our ruling.

ORDER

For all the foregoing reasons, it is this 4th day of May, 1981

ORDERED

That Tex Pirg's Motions For Reconsideration of Certain Actions, For Interlocutory Appeal pursuant to § 2.730(f), For Certification of Questions Pursuant to § 2.718(i), and To Designate a New Board are denied.

Judge Cheatum concurs but was unavailable to sign the instant Memorandum and Order.

THE ATOMIC SAFETY AND
LICENSING BOARD

G. C. Linenberger

Gustave A. Linenberger, Jr.
ADMINISTRATIVE JUDGE

Sheldon J. Wolfe

Sheldon J. Wolfe, Chairman
ADMINISTRATIVE JUDGE

TO: Document Control Desk, 016 Phillips

FROM: Docketing & Service Branch, Office of the Secretary

SUBJECT: REQUEST FOR DISTRIBUTION SERVICE THROUGH REGULATORY INFORMATION DISTRIBUTION SYSTEM (RIDS)

NOTE: The attached document, which relates to a specific licensing docket, is the DOCUMENT CONTROL ACTION COPY. It is certified by the Office of the Secretary as the best available copy.

RIDS CODES AND TITLES

Rids Code	Description
DS01	Antitrust Issuances
DS02	Non-Antitrust Issuances
DS03	Filings (Not Originated by NRC)
DS04	Antitrust Filings (Originated by Non-Parties)
DS05	Non-Antitrust Filings (Originated by Non-Parties)
DS06	ELD Filings (Antitrust)
DS07	ELD Filings (Non-Antitrust)
DS08	Antitrust Filings (Not Originated by NRC)

Add: