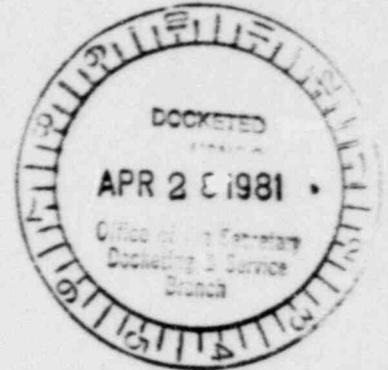


April 29, 1981

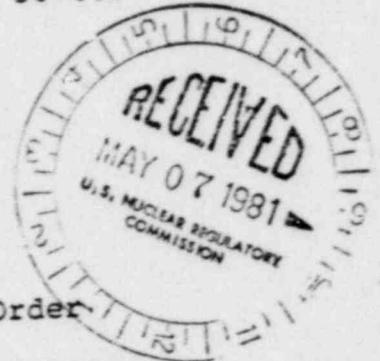
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
HOUSTON LIGHTING & POWER COMPANY)
(Allens Creek Nuclear Generating)
Station, Unit 1))

Docket No. 50-466

APPLICANT'S MOTION FOR NEW CROSS
EXAMINATION PROCEDURES



Applicant moves the Licensing Board for an Order adopting specific procedures to govern the conduct of cross-examination during the health and safety phase of this proceeding. A proposed form of Order is attached.

The Board has already established a schedule to consider 28 health and safety contentions beginning on May 11, 1981. The contentions which have been set down for hearing include 14 Doherty contentions, 7 TexPirg contentions, 5 Bishop contentions and 3 Board Questions. In addition, there are as many as 33 other health and safety contentions to be heard after the completion of the scheduled issues.

In light of the experience of the recently concluded environmental hearings, and the large number of pending health and safety issues, Applicant believes that the procedures suggested in the attached form of Order are warranted to ensure

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that cross-examination is not cumulative and repetitious, and that a meaningful record is developed on these remaining issues without undue delay.

The Commission's regulations (10 C.F.R. §2.718 and 10 C.F.R. §2.757), and relevant NRC case law (e.g., Northern States Power Co. (Prairie Island Nuclear Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 866-69, reconsideration denied, ALAB-252, 8 AEC 1175, aff'd., CLI-75-1, 1 NRC 1 (1975)) provide the Board ample authority to limit cross-examination to that which will contribute to a meaningful record. Because questions concerning the scope of cross-examination, and the parties that may engage in it depend upon the posture of a particular case, such matters are committed to the Board's discretion. Public Service Co. of Indiana (Marble Hills Units 1 and 2), ALAB-461, 7 NRC 313, 316 (1978). The Commission's regulations explicitly authorize this Board to "[t]ake necessary and proper measures to prevent argumentative, repetitious or cumulative cross-examination," (10 C.F.R. §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 C.F.R. §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." (Prairie Island, 8 AEC at 868).

As the Board is aware several devices are available to ensure that cross-examination is meaningful. Time limitations may be placed on cross-examination. Consumers Power Company (Midland Plant, Units 1 and 2), LBP-75-39, 2 NRC 29, 113 (1975). The Board may require parties to submit an advance indication of the matters to be explored on cross and if it then appears that "cross-examination will be irrelevant, repetitious or otherwise of no value to the development of a full record" the Board may limit or preclude it accordingly. (Prairie Island, 8 AEC at 869 (footnote omitted)). Finally, consistent with the provisions of 10 C.F.R. §2.715a, the Board may further consolidate the parties for purposes of cross-examination.*

*/ The Commission presently has under consideration a draft "Policy Statement on the Efficient Conduct of Licensing Proceedings." (SECY-81-202B, April 24, 1981). This draft Policy Statement provides that, consonant with the regulation favoring consolidation of intervenors. (10 C.F.R. §2.715a):

[L]ead intervenors should be designated to present evidence, to conduct cross-examination, to submit briefs, and to prepare findings of fact, conclusions of law, and argument. Where such consolidation has taken place, those functions should not be performed by other intervenors except upon a showing of prejudice to such other intervenors' interest or upon a showing to the satisfaction of the Board that the record would otherwise be incomplete.

(Draft Statement at 4-5).

Later the Commission recommends that Boards require submittal of "cross-examination plans" which "would be of benefit in most proceedings." (Id. at 8).

Although the Commission has not yet adopted the Statement of Policy, the above-cited portions have been tentatively approved.

Unlike the broader environmental contentions which may be fully understood by persons without advanced scientific training and experience, the pending health and safety issues, with but a few exceptions, are all highly technical and raise narrow questions challenging the adequacy of plant design features. Applicant's testimony reflects this difference. The testimony is, in the main, very technical and addresses specifically the very discrete questions raised by these contentions.

Because of the nature of these issues, most of the intervenors, even with diligent study, will not have the necessary training and/or background to conduct meaningful cross-examination of Applicant and Staff witnesses. For this reason, the Applicant requests the Board to require the lead party^{*/} on each contention to cross-examine Applicant and Staff witnesses first. If any other intervenor wishes to undertake additional cross-examination that intervenor should be required to file, in advance, detailed cross-examination plans for any witness that he/she desires to cross-examine. Those plans should precisely specify which portions of the prefiled testimony the cross-examiner wants to explore and the specific points the cross-examiner hopes to adduce. Of course, the

^{*/} The Board has already designated lead parties for all consolidated contentions. For contentions in which no consolidation has occurred, the intervenor who submitted the contention would be the lead party.

plans would be submitted only to the Board. After reviewing those plans, the Board should determine whether this supplemental cross-examination might assist in the development of a full and sound record and, if so, permit additional interrogation on those portions of the prefiled cross-examination plans that have not yet been fully explored by the lead intervenor.

This procedure is logical since the intervenor who sponsored a particular contention and who has been responsible for litigation of it, can be presumed to have made an effort to familiarize him or her self with the portion of the nuclear plant which the contention addresses. The lead party's cross-examination is therefore likely to be more meaningful and to assist in the development of a sound record. In addition this procedure is consistent with the Board's earlier efforts to have the intervenors coordinate their cross-examination since it emphasizes the role of a knowledgeable lead intervenor who will be expected to prepare thoroughly for cross-examination on his/her own contentions.

Applicant believes the procedure described above will ultimately save time and lessen the overall burden on the Board by limiting the number of objectionable cross-examination questions. Equally important, the public interest in the timely completion of proceedings of this type will be served.

Respectfully submitted,

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Proposed Order

The Applicant has filed a motion requesting the Board to establish procedures to govern the conduct of cross-examination during the upcoming health and safety hearings. The Board grants the Applicant's motion.

As the Applicant states, there are a large number of health and safety issues to be litigated during the upcoming phase of this proceeding. In addition, the majority of these health and safety issues are highly technical and are addressed to specific features of the nuclear plant. For these reasons, the Board believes that specific cross-examination procedures are required to ensure that the health and safety hearings are completed without undue delay and that a meaningful record is made on the numerous issues before the Board. Accordingly, pursuant to our authority under 10 C.F.R. §2.718 and §2.757, the Board establishes the following procedures to govern cross-examination during the upcoming hearings.

(1) The lead intervenor, or if no consolidation has been made by the Board, the intervenor who filed a particular contention, will be the first intervenor to cross-examine Applicant and Staff witnesses on that contention.

(2) Parties (other than the lead intervenor) desiring to cross-examine that witness must file a cross-examination plan with the Board, at least one day in advance of that witness's appearance before the Board. The cross-examination plan should specify the portion (page and line number) of the witness's testimony that the cross-examiner intends to explore, and the point or points the cross-examiner hopes to adduce with respect to that portion of the testimony.

(3) Upon a showing by any intervenor that additional cross-examination will be relevant and will assist the development of a full record, the Board will permit cross-examination in addition to that of the lead party. The required showing will be made if, from the pre-filed cross-examination plans, the Board concludes either that: (a) points addressed in those plans were not raised by the lead intervenor; or (b) points addressed in the plans were not explored in sufficient depth by the lead intervenor to make a complete record. In addition, the Board will determine whether the specific areas sought to be addressed during cross-examination are relevant and material to the issue at bar.

It is so Ordered:

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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_____)

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Motion for New Cross Examination Procedures (and the Proposed Order) have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid, or by hand delivery as indicated by an asterisk, on this 29th day of April, 1981.

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