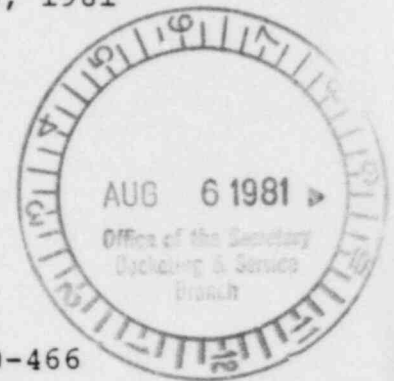


August 5, 1981

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of

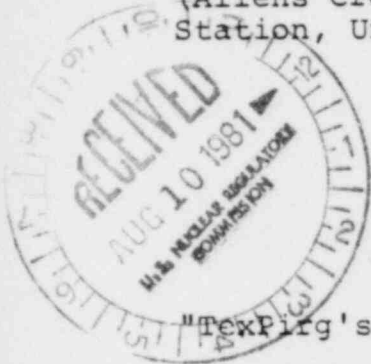
HOUSTON LIGHTING & POWER COMPANY

(Allens Creek Nuclear Generating
Station, Unit 1)

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Docket No. 50-466

MOTION TO STRIKE PREFILED
TESTIMONY OF DR. MARRACK



On July 27, 1981, TexPirg filed a document entitled
"TexPirg's Supplemental Direct Written Testimony of Dr. Marrack".

This supplemental testimony was to be offered in response to
testimony presented by Dr. Frank Sanders on February 5 and 6,
1981. (Tr. 9799-80). ^{1/} For the reasons stated below, Applicant
moves to strike the majority of this testimony.

For ease of reference, a copy of the testimony is
attached hereto with numbers written beside each paragraph.
A careful review of the testimony and the record shows that
in fact this testimony is not specifically responsive to Dr.
Sanders' testimony.

Paragraph 1: The testimony states that "[b]oth Dr. Sanders

1/ There are only three transcript references in the entire
14 pages of testimony, and even these three references
have no apparent relationship to the subject of Dr.
Marrack's testimony. Absent specific and relevant
transcript references, counsel for the other parties,
and the Board, are left to guess at what portions of
Dr. Sanders' testimony are being addressed by Dr. Marrack.

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and the Texas Parks and Wildlife Department both admit that for a sustained desirable sport fishery, the Allens Creek Lake will depend on regular restocking of fish." There is no such admission by Dr. Sanders or the TPWD at pages 4701 to 5083. In fact, Dr. Sanders testified that the lake would be a self-sustaining crappie fishery. (Tr. 5035-36). The testimony is thus offered in response to a statement that was not made and should be stricken.

Paragraph 2: This paragraph discusses the threat to humans from ingestion of fish contaminated with mercury. Dr. Sanders does not testify at pages 4701 to 5083 as to the amount of mercury contamination of fish necessary to cause a health hazard to humans. (Also see the discussion of Paragraphs 31-33, infra.) The testimony is not properly offered as a response to Dr. Sanders' testimony and should be stricken.

Paragraph 3: The testimony in this paragraph is not reliable or material evidence because Dr. Marrack has previously admitted he is not an expert on the spawning habits of the sport fish that will be in the lake (Tr. 4469-73). Accordingly, this paragraph should be stricken.

Paragraph 4: This paragraph asserts that there will not "be enough shad and other smaller fish to supply the dietary needs of the sport fish." He cites four factors which will limit growth of shad: (1) lack of spawning habitat; (2) limited sunlight penetration; (3) power plant cropping; (4) chlorine.

Dr. Sanders did testify that there would be abundant spawning habitat for shad (Tr. 4710). However, for

the reasons discussed in connection with Paragraph 3, any testimony by Dr. Marrack on spawning habitat is not reliable or material evidence and should be stricken. Indeed, Dr. Cheatum had to inform Dr. Marrack of the spawning habits of shad (Tr. 4462). Points (2) and (4) were never discussed in terms of their impact on the growth of shad (see Tr. 4724; 4716; 4735; 4740; 4750). Point (3) is beyond the scope of the contention (Tr. 5009-5011). Accordingly, the paragraph should be stricken in its entirety.

Paragraph 5: The testimony in the first seven sentences regarding the state of the record in the absence of the TPWD in this hearing is argumentative and should be stricken. The last three sentences are legal argument and should be stricken.

Paragraphs 6, 7, 8 & 9: Dr. Marrack's testimony in these four paragraphs is premised on the representation that Dr. Sanders testified that his calculation of chlorine decay rates was based on the assumption that there is "a single chemical called 'TRC'." Clearly that was not Dr. Sanders' assumption. (See Tr. 4740; 4750). These four paragraphs are thus based on a misrepresentation as to what Dr. Sanders stated and, therefore, all four paragraphs should be stricken.

Paragraphs 10 & 11: These paragraphs should be stricken. The question of water quality in the reservoir prior to plant operation is irrelevant.

Paragraphs 12-15: Rather than expressing disagreement with Dr. Sanders' calculations, Dr. Marrack has indicated that

he was relying upon Dr. Sanders' calculations for his own conclusions (Tr. 4481-83). His supplemental testimony is obviously nothing more than an effort by Dr. Marrack to change his prior testimony and does not respond to any statement by Dr. Sanders at pages 4701 to 5083. In fact, Dr. Sanders made no projections of the future growth of Sealy and Wallis. (Tr. 4720). Therefore, this paragraph should be stricken, because it does not respond to any statements by Dr. Sanders regarding future population projections.

Paragraphs 16 & 17: These two paragraphs are offered in response to comments at Tr. 4720 regarding the effects on recreational use of "inadequately treated sewage" and "exotic weed growth and algae bloom," None of these subjects were discussed at Tr. 4720, so this could not be offered in response to Dr. Sanders' testimony. Moreover, the question of "exotic weed growth" is outside the scope of the contentions. Accordingly, these paragraphs should be stricken in their entirety.

Paragraphs 18-21: These paragraphs are stated to be in response to remarks made by Dr. Sanders at Tr. 4708. However, none of the topics covered in these four paragraphs--chlorine, temperature, heavy metals, algae - were discussed at Tr. 4708. Therefore, this is not offered in response to Dr. Sanders' testimony and should be stricken.

Paragraphs 22-24: Dr. Sanders was never asked any questions that required him to justify the assumption that the lake would support 200 pounds of fish per acre (see Tr. 4983, 5080). Moreover, the transcript reference (Tr. 4732) in Dr.

Marrack's testimony has nothing to do with the subject. All that is contained on that page is a question by Mr. Doherty that is totally irrelevant to the calculation of the standing crop of fish in the lake. These paragraphs should be stricken in their entirety because they are not offered in response to Dr. Sanders' testimony.

Paragraph 25: This subject was discussed at Tr. 4751 and Dr. Marrack's testimony is arguably responsive.

Paragraphs 26-27: The subject of cold shock was discussed at Tr. 4775-4782, but there was no discussion of the rate of change, or absolute temperature necessary for cold shock. Accordingly, this is not offered in response to Dr. Sanders' testimony and these two paragraphs should be stricken.

Paragraph 28: This paragraph should be stricken for the reasons stated in the discussion of Paragraphs 22-24.

Paragraph 29: This paragraph constitutes legal argument and should be stricken.

Paragraph 30: This subject was discussed in Dr. Sanders' testimony (see Tr. 4825-27), but there is no apparent conflict between the two. It is, therefore, impossible to tell why this testimony is being offered.

Paragraphs 31-33: The testimony in Paragraphs 31 and 32 are obviously intended as a basis for the conclusion in Paragraph 33 which concludes that mercury in fish will be a health hazard to humans. Dr. Sanders' testimony related to the effect of heavy metals on the fish. He did not testify on the effect on humans of eating mercury contaminated fish. (Tr. 4702; 4747-49; 4766-4770). The Board has

previously ruled that the latter issue is beyond the scope of TexPirg's contention (Tr. 4770). Therefore, these paragraphs do not constitute relevant evidence and should be stricken.

Paragraph 34: This subject was discussed at Tr. 5013-14, and Dr. Marrack's testimony is arguably responsive.

Paragraph 35: Contrary to the first sentence of this testimony, Dr. Sanders testified that crappie would spawn to depths greater than eight feet (Tr. 4947; 4960-4963). Accordingly, the testimony is based on misrepresentation of Dr. Sanders' testimony and should be stricken. The testimony should also be stricken for the reasons described in discussion of Paragraph 3.

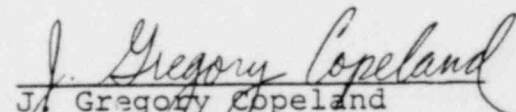
In sum, Applicant's paragraph by paragraph review has shown that only two paragraphs (25 and 34) are relevant, admissible testimony that are arguably offered in response to Dr. Sanders' testimony. The remaining paragraphs contain non-responsive, irrelevant and inadmissible testimony which should be stricken.

Respectfully submitted,

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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)	§	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Applicant's Motion to Strike Prefiled Testimony of Dr. Marrack 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 August, 1981.

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