

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

ATOMIC SAFETY AND LICENSING BOARD

'82 FEB -1 P3:51

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
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In the Matter of)
)
HOUSTON LIGHTING AND POWER COMPANY)
)
(Aliens Creek Nuclear Generating)
Station, Unit 1))

Docket No. 50-466-CP

February 1, 1982



MEMORANDUM AND ORDER
(Denying Three Motions In TexPirg's
Submission of December 7, 1981)

MEMORANDUM

On December 7, 1981, TexPirg submitted a document setting forth three motions.^{1/} Applicant and Staff filed responses in opposition respectively on December 17 and December 22, 1981.

1. In its first motion, TexPirg alleges that Applicant has admitted that the construction schedule at the South Texas Project will

^{1/} On December 9, 1981, at the conclusion of the eighty-seventh day of hearing, the Board closed the record. However, the instant submission was excepted from that closure. (Tr. 21304-06)

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be significantly delayed because Brown and Root has been discharged. It urges that this delay at STP is relevant and material to its alternative site contention ^{2/} because it is now clear that STP will not be completed before the construction of Allens Creek (as STP unit 3) could start. Thus, TexPirg alleges that the STP workers could easily transfer to the construction of the Allens Creek plant at the STP site without any social impact on the community. (We presume TexPirg means without any added social impact.) TexPirg requests that evidence be presented on the impacts of these events.

In the first place, TexPirg's allegation is a barren one, and, in fact, contrary to TexPirg's counsel's assertion during the hearing on October 5, 1981 (Tr. 17601), Applicant's Executive Vice President denied that an announcement of a two year delay at STP had been made (Tr. 18361). Second, even assuming that the three units could be constructed sequentially at the STP site, the Staff concluded in Supplement 2 to the Final Environmental Statement that the STP site would be no more than equivalent to the Allens Creek site from a socio-economic standpoint. This conclusion was based on the significant adverse fiscal impact on the areas where the construction workers

^{2/} TexPirg Contention 1, STP 3 vs. AC I, was admitted in the Order dated February 9, 1979. Our Orders of March 10, 1980 and May 23, 1980, consolidated TexPirg Contention 1 with other Intervenor's contentions (Bishop 23(a), Conn 2, Cumings 4, Doggett 2, Johnston 5-2/6-1, and Lemmer 2) and designated TexPirg as the lead party.

for STP reside as contrasted to the benefits that would accrue to the jurisdiction where the plant would be located. (Staff Ex. 13, pp. 2-65, 66; 2-55, 56). In support of this conclusion, the Staff presented witnesses (Testimony fol. Tr. 10232); cross-examination (Tr. 10436 - 10442) and Board questioning (Tr. 10566 - 10570) followed. Thus, while TexPirg's scenario is slightly different than Staff's with respect to the sequence of construction, it does not lessen the adverse socio-economic impact addressed by the Staff. Thus, no further evidentiary consideration is warranted. Finally, and again assuming that the three units could be constructed sequentially at the STP site, TexPirg has not alleged that the STP site would be an "obviously superior" site to the Allens Creek site. Such a failure is fatal to TexPirg's request. See Public Service Company of New Hampshire, et. al. (Seabrook Station, Units 1 and 2), CLI-77-8, 5 NRC 503, 526 (1977). TexPirg's first motion is denied.

2. In its second motion,^{3/} TexPirg adverts to the same article from the November 5, 1981, edition of the Houston Post which Intervenor Doherty had appended to his Motion For Additional Testimony With Regard To Need For Power Issue that had been filed on November 6, 1981. Insofar as the Motion requests that additional testimony and cross-examination upon need for power be ordered because the

^{3/} Solely for the purpose of ruling upon this second motion, the Board assumes that several of TexPirg's contentions relate to need for power.

City of Austin, Texas has voted to sell its sixteen percent interest in STP, we deny the Motion for the same reason we denied the Doherty Motion in our Order of December 30, 1981 - namely, that various assumptions relied upon in support of the Motion are founded on pure speculation. In the instant Motion, TexPirg also alleges that the City of San Antonio has expressed an interest in selling its twenty-eight percent interest in STP to Applicant, and that TexPirg proposes to have officials from both cities testify as to their willingness to sell their shares in STP to Applicant at the original cost. Again, this portion of the Motion is based upon pure speculation since no decision has been made by San Antonio to sell its interest in STP and the cited newspaper article reflects that HL&P has stated that it is not in the market for additional shares. Thus, no further evidentiary consideration is warranted and this part of the Motion is denied.

TexPirg also asserts that on August 13, 1981, the Applicant admitted that an HL&P study reflected that residential conservation would save twenty-five percent and reduce peak demands in such a way as to significantly reduce new power plant construction costs. TexPirg requests that this study be made a part of the record. We agree with Applicant and the Staff that this request is untimely. Since TexPirg was aware of HL&P's alleged admission on August 13, 1981, it should have requested production of the study in a timely manner and, on September 16, 1981, should have proceeded to cross-examine Mr. Edwards about this study when he testified regarding Applicant's downward

revision in its demand forecast (Guy and Edward testimony at p. 3, fol. Tr. 16903). No further evidentiary consideration is warranted and this part of the Motion is denied.

Further, TexPirg requests that evidence should be heard regarding the recent announcement that several new co-generation plants will be constructed which will generate 70 MW of electricity that will replace electricity that Applicant has forecast to supply. The request is patently frivolous. At this late date, we are not told (a) when these co-generation plants will be operational, (b) how such amounts could significantly affect Applicant's supply or demand forecasts, and (c) how the entire 70 MW, if available, could be deemed as a replacement for the 1200 MW generating capacity of Allens Creek. This part of the Motion is denied.

Finally, TexPirg urges that evidence should be presented to show that Applicant has recently agreed to interconnect with out-of-state utilities and thus to establish that there is no need for Allens Creek. At a minimum, at this late date, it was incumbent upon TexPirg to make at least some showing how this new evidence would obviate the need for Allens Creek. In light of contrary evidence which has been spread upon the record (see Testimony of Applicant's D. E. Simmons, pp. 7, 13, fol. Tr. 5131; Testimony of Staff's Witnesses, pp. 50-53, fol. Tr. 6227), it cannot be heard merely to barrenly allege that interconnections would obviate the need for Allens Creek. This part of the Motion is denied.

3. In its third motion, TexPirg requests that it be permitted to present additional testimony and/or to cross-examine with regard to its Additional Contention 31 (Applicant's Technical Qualifications) because two recent Houston, Texas newspaper articles reported that a consulting firm, hired by HL&P, in its so-called "Quadrex Report", had reported design-engineering work deficiencies at the South Texas Project and that, as a result of that Report, HL&P had discharged Brown and Root, its engineering design contractor. On December 7, 1981, Intervenor John Doherty had submitted a Renewed Motion For Additional Evidence On TexPirg Additional Contention 31 (Applicant's Technical Qualifications). In the Memorandum and Order of January 28, 1982, the Board granted Mr. Doherty's aforementioned Renewed Motion,^{4/} and ruled that, in lieu of TexPirg, Mr. Doherty should serve as the lead intervening party who should present the direct testimonies of witnesses, if any, cross-examine, and submit briefs, proposed findings of fact, and conclusions of law with respect to the Quadrex Report. The discussion and ruling in the Memorandum and Order of January 28, 1982, is incorporated herein by reference. The third motion is thus denied.

^{4/} Judge Cheatum dissented.

ORDER

For the foregoing reasons, it is, this 1st day of February 1982,

ORDERED

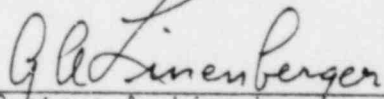
1. That TexPirg's Motion Requesting That Additional Evidence Be Presented Upon TexPirg Contention 1, STP 3 vs. AC I, is denied.

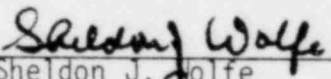
2. That TexPirg's Motion Requesting That Additional Testimony and Cross-Examination Be Ordered Upon The Need For Power Issue is denied, and

3. That TexPirg's Motion Requesting That It Be Permitted To Present Additional Testimony And/Or To Cross-Examine With Regard To Its Additional Contention 31 is denied.

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

THE ATOMIC SAFETY AND
LICENSING BOARD


Gustave A. Linenberger, Jr.
ADMINISTRATIVE JUDGE


Sheldon J. Wolfe
ADMINISTRATIVE JUDGE