

"DLSHC Houston-11611"

February 12, 1981



SECY-81-107

ADJUDICATORY ISSUE
(Information)

For: The Commission

From: James A. Fitzgerald
Assistant General Counsel

Subject: REVIEW OF ALAB-630 AND ALAB-631 (MATTER OF HOUSTON LIGHTING AND POWER CO.)

Facility: Allens Creek Nuclear Generating Station

Purpose: To inform the Commission of minor Appeal Board decisions ^{EX}

Discussion: ALAB-630

The Allens Creek proceeding is now in hearings on environmental and site suitability issues. TexPIRG, an intervenor, filed exceptions before both the Licensing Board and the Appeal Board to a number of evidentiary rulings made in the week January 23, 1981, concerning the scope of cross-examination, and seeking reconstitution of

Contact:
Mark E. Chopko, GC
X-43224

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 5
FOIA- 92-436

8110290005

EX-5

T/S

Licensing Board (Attachment 1). In ALAB-630, the Appeal Board denied all relief because: (1) the Licensing Board should rule first on the motion for reconsideration before any appellate review; simultaneous filings will not be entertained; and (2) the extreme lack of precision of TexPIRG's generalized complaints. (Attachment 2).

EX. 5

EX. 5

According to the TexPIRG pleading, the Board insisted the witnesses be told the purpose of the questions beforehand and otherwise engaged in stringent limits on cross-examination.

EX. 5

Rather than insist that the parties be present all the time (TexPIRG Allegation #1), the Board has permitted parties to confer with

EX. 5

each other, read the transcript to be current on the proceedings, and switch turns in conducting cross-examination. (Tr. 3748, 3857). It also does not appear that the Board has limited cross-examination in any significant way. Indeed, the Board permitted examination over objections of untimeliness in order to develop the record. (Tr. 3757 et seq.).

(e.g., Tr. 3498, 3526).^{3/}

The Board also expressly permitted more detailed cross-examination by TexPIRG even though another participant had already examined the witness on that point. (Tr. 3499, contra TexPIRG #4(b)).

EX-5

EX-5

EX-5

From the transcript, the Board had been anticipating the arrival of TexPIRG the entire day -- TexPIRG never arrived. Examination by other parties

^{3/}

After almost a full day of TexPIRG cross-examination on Thursday, the 22nd, the Board asked TexPIRG's lawyer where a particular line of questions was heading (a permissible inquiry). Even though TexPIRG had volunteered such information throughout the day, it refused to answer the question in the presence of the witness. The Board did not press for an answer and no harm occurred (Tr. 3698-3700).

EX-5

3696).

(Tr. 3635, 3675-76,

continued and evidence (such as the applicant's Environmental Report and the staff's FES Supplement) was received with no objection from intervenors present. (Contra TexPIRG #5(d)).^{4/} In addition, TexPIRG complained about a limitation on the scope of another intervenor's examination, which is the subject of ALAB-631.

ALAB-631

On January 23, intervenor Rentfro attended the Allens Creek hearings for the first time since they commenced a week and a half before. (Tr. 3816-17). Mr. Rentfro's sole basis for intervention and participation was the health effects of the transmission lines on his cattle. When he arrived, he asked general questions of the Board on the procedure being followed and where matters stood at that point; the Board recessed the hearing so the parties could inform Mr. Rentfro on the conduct of the proceeding to that date. After the recess and when the examination of a witness was nearly complete, the Board asked Mr. Rentfro whether he was satisfied with the explanation of the hearing status. (Tr. 3840-41). Mr. Rentfro replied affirmatively but wanted to ask two questions of the witness then testifying on the biological effects of discharge into the cooling lake. On applicant's objection that the questions were impermissible because Rentfro had no discernible interest in that aspect of the proceeding and over the contrary view offered

4/

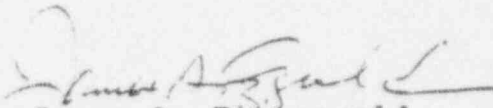
In our view,

E.V.S

(Attachment 4). The Board denied relief based on the interlocutory nature of the matter. (Attachment 5).

~~The~~ transcript reveals no objections by Mr. Rentfro to the Board's actions when taken. EX. 5

We will continue to monitor this proceeding and report as necessary.


James A. Fitzgerald
Assistant General Counsel

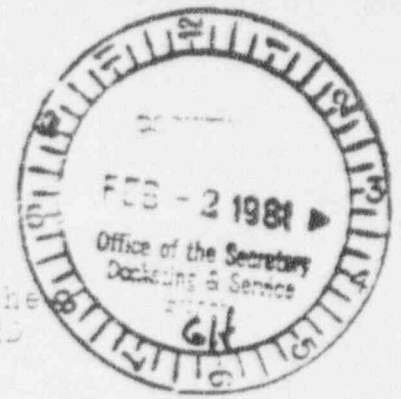
- Attachments: - IN BP
1. TexPIRG Motion
 2. ALAB-630 (2/3/81)
 3. ALAB-631 (2/4/81)
 4. Rentfro Appeal
 5. Appeal Board Memorandum (2/5/81)

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ATTACHMENT 1

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE
ATOMIC SAFETY AND LICENSING BOARD and the
ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of

Houston Lighting and Power Co.

(Allens Creek, Unit 1)

X
X
X
X
X

Docket No. 50-466

TEX PIRG'S MOTIONS TO:

A. LICENSING BOARD FOR:

1. Reconsideration of certain actions taken during week of Jan. 18 to 24 which restricted right of intervenors to cross-examine.
2. Interlocutory appeal per 2.730(f), and
3. Certification of questions per 2.713(1) and

B. APPEAL BOARD FOR:

1. Directed Certification of questions related to restrictions in Cross-examination
2. Appointment of a new Licensing Board.

I. BACKGROUND

Ever since Mr. Samuel W. Jensch was replaced as chairman of the Licensing Board, this board has attempted to restrict intervenors in this proceeding. In ALAB-535 the Appeal Board held that the Licensing Board had unduly restricted intervenors' contentions. In ALAB-539, this decision was upheld. Still the Board refused to republish the Notice of Intervention Procedures until the Appeal Board in ALAB-544 pointed out to the Board and Applicant that they might be making a mistake. Still the Board refused to publish a unrestricted notice, but required citizens to state in public that the only reason that they had not asked to intervene earlier was that they had been stopped by the prior restrictions. One intervenor actually cried when asked why she ~~had~~ not asked to intervene earlier. Of the over 100 people who asked to intervene less than 10% were allowed to take part.

Now, after the past week, it is clear that even the parties are not going to be given a fair chance to fully participate in the hearings.

1. First the Board has required that all parties be present at all times in the hearings or lose their rights, but the Board has not required that the NRC and Applicant witnesses be present at all times or even until a party has finished cross-examination. It is totally impossible

for most intervenors to miss several months of work to sit in the hearings on a full time basis. The Board specifically refused to hold some night and week-end sessions to allow those intervenors more input.

2. 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.

3. The Board does not allow complete cross-examination by restricting questions to the literal direct testimony, instead of the scope of the contention. They also restrict the scope of the contention to the literal basis mentioned in the contention. For example in the Tex PIRG cooling lake contentions, 2 and 4, Tex PIRG was not allowed to ask about pesticides in the lake just because that was not one of the bases used in the original contention to show that the lake would not be good for recreation.

4. The Board refused to allow complete and through cross-examination even though for most intervenors that is their only way to participate since they could not afford expensive "expert" witnesses. This refusal took several forms.

(a) The Board demanded that the Cross-examiner tell the witness what his goal was. This totally prevents effective cross because the witness can answer in such a way as to prevent the desired result. Tex PIRG offered to tell the Board what the goal of a line of questions was so long as it was not told to the witness. The Board refused this offer.

(b) The Board often ruled that if someone had cross-examined any witness on a general subject that noone else could cross on that subject even though they would have asked different or more detailed questions.

(c) The Board twice refused to let Tex PIRG continue cross-examination (Dr Schlicht and Dr Armstrong) even though its attorney told the board that it had over 50 written questions that were not "argumentative, repetitious, or cumulative". It is clear that the Board was unhappy with the numerous admissions and impeachment of so called experts that Tex PIRG's attorney had managed. The Board and witnesses did not expect to be cross-examined by an attorney with a MS in nuclear

Physics, and BS in Physics, Chemistry, and Math who had read the complete ER and FES. Numerous court decisions have held that cross-examination may be full and exhaustive and must not be unduly limited or restricted. 360 F₂ 569,577; 350 F₂ 231; 130 F₂ 330; 128 F₂ 604; 164 F₂ 841; 55 F₂ 139; 55 F₂ 844; 24 F₂ 153; 232 F 662; Also see 2.743(a).

(d) The Board often "pressured" intervenors to complete their cross in a short time, like thirty minutes or force intervenors to detail what their questions would be.

5. In several cases the Board totally prevented cross-examination.

(a) On Friday, Jan. 23, 1981, the Board refused to let Mr. Rentfro conduct even limited cross-examination. They claimed that the Prairie Island case, 8 NRC 458; 8 NRC 857; 8 NRC 1175 prevented anyone from cross examination except on their own contentions. In fact the case says exactly the opposite, ie that any party can cross-examine all other party witnesses. The only reason that the pro se intervenor in that case did not get to cross examine is that when asked by the appeal Board what he wished to cross on, he said his contentions that had not been admitted into the proceeding. Therefore the Licensing board error was harmless. Still the appeal Board allowed him to cross examine on the remand of the case. There can be no valid claim that Mr Rentfro has no interest in the contentions that he asked to cross on. He lives close to the plant, owns land very close to the plant, was one of only two intervenors who took part in the hearings of 1975, has transmission lines planned to pass over his land that would not be so if the plant is either not built or moved to another location, and by helping with the cooling lake contentions would be helping to get the plant moved to another location.

(b) By applying the Rentfro ruling to other intervenors, on a case by case basis, they will be able to prevent most if not all intervenors from cross-examination except on their own contentions. For example Mr. Baker's only contention is related to financial qualifications.

(c) By wrongly refusing Rentfro's cross until the lunch break, by working through the lunch break, and dismissing the witnesses, Schlicht and Tischler, by dismissing early to catch a plane, the three intervenors who appeared for + afternoon session (Tex PIRG, McCorkle, and Bishop) were wrongly denied their right to cross examine the dismissed witnesses. This is another example of Board action where the convenience of the Board and witnesses is put above that of intervenors

(a) Also on Friday, Jan. 23, 1981, the Board allowed both the Applicant and NRC Staff to introduce into evidence their ER Supplement and Final Supplement to FES even though the record showed that Tex PIRG had said that it objected to their introduction unless a showing was made as to what parts of each were done by who and those persons were made available for cross examination as to those parts that related to any of the accepted contentions. Rather than introduce the documents when Tex PIRG's attorney was present they waited until no intervenor attorneys were present then introduced them without objection then promptly dismissed the witnesses so they could not be cross-examined. The Board was fully aware of what they were doing and how it would hurt the intervenors case yet they allowed it to happen.

6. In several occasions the Board, especially Dr. Linsenberger, would stop Tex PIRG's cross-examination at critical times when a witness had just made statements that helped intervenors case or was just about to do so. The Board would then ask its own question in such a way that the witness could see that he had damaged Applicants case. The witness then would either change or "clarify" its answer to reduce the damage caused.

In summary, for the reasons mentioned above, and many others that can be seen if the transcript for the hearing to date is read, Tex PIRG believes that reversible error that is harmful to it and other intervenors has already occurred in this case such that any final decision by this Board to grant the construction permit will be overturned. Rather than waste about one year of time in hearings before a final decision is made which will almost certainly be overturned based on errors already made Licensing Board should promptly either correct its errors (let Tex PIRG continue its cross of the three witnesses dismissed, let Rentfro, McCorkle, Bishop etc cross, make those who prepared the ER Supp and FESFS available for cross, etc) or refer its ruling to the Appeal Board so they can promptly set the standards to be used in this proceeding. Even if the Board corrects its errors, Tex PIRG is very doubtful that it can get a fair, impartial decision from this Board because of the obvious friction and tension between the Board and Tex PIRG's attorney (no matter who's fault it is). It is therefore with great reluctance that Tex PIRG asks that a new Board hear this case.

II. ACTIONS REQUESTED

With the foregoing background as basis, Tex PIRG MOVES that:

1. The Licensing Board:

(a) Tex PIRG be allowed to continue to cross Dr Schlicht and Dr. Armstrong until it has finished or that a valid limit bases on 2.756 can be made.

(b) Tex PIRG be allowed to cross-examine Dr. Tischler who was dismissed early by improperly preventing Mr. Rentfro from cross and working through the lunch break without notice to the parties. Three parties were there to cross him before 1:30 pm which is the earliest that the Board had ever returned from lunch.

(c) Allow Tex PIRG to do it cross of the above three witnesses and all other NRC Staff and Applicant witnesses before it presents its witness Dr. Harrack for cross. Witnesses means those who presented direct testimony on the contentions that Dr Harrack supplied direct testimony for. It includes those that prepared the NRC RSFIS and applicants ER Supplement.

(d) Allow all other parties to cross examine all witnesses if they can so so without causing the panel or witness if not part of a panel to be delayed for over 4 hours without anyone to cross them.

(e) Allow Rentfro to cross-examine all witnesses that any other party is allowed to cross-examine.

(f) Allow Bishop to finish cross-examination of Dr. Armstrong.

(g) Allow Bishop and McCorkle to cross all three applicant witnesses which were dismissed early by working through lunch and improperly preventing the cross by Rentfro.

(h) Allow all parties to cross-examine all witnesses on all issues relevant to the contention and their general subject matter of direct testimony as opposed to limiting it to the exact bases listed to supply the one basis needed for a valid contention. For example Tex PIRG should be allowed to cross on pesticides because they can cause health hazards directly and through their heavy metal contributions.

(i) all intervenors to schedule among themselves so that any party can stop its cross of a witness to allow another party to do their cross of even another witness present, then allow the original party to continue their cross-examination.

(j) To schedule at least one evening and one weekend session for each week and to allow at least one full weekday to be free of hearings. This is to allow participation by those that have full time jobs, and to allow others to get some other work done while the courts and businesses are open.

(k) Strike the introduction into evidence the Applicants ER and ER Supplement as well as the NRC Staff FES and Supplements until a witness has been identified that prepared each part of each document and that person is made available for cross examination by all parties. Otherwise most of the record is gross hearsay and the due process right of cross-examination is denied.

2. The Appeal Board:

(a) Promptly read the complete record of the hearing to date (one week) to see for itself the unfairness to intervenors.

(b) Direct Certification of the following questions:

- (i) Can the Licensing Board stop cross-examination even though 2.757 has not been violated?
- (ii) Did the Licensing Board improperly stop Tex FERG from cross-examination?
- (iii) Was it proper to prevent Mr. Rentfro from cross-examination except as to his own contentions?
- (iv) Was it proper to prevent cross-examination by preventing Mr. Rentfro's cross, changing the hearing schedule without notice, and dismissing the witnesses before the parties got to the hearing before the normal afternoon session was scheduled to start?
- (v) Is it proper to allow the introduction into evidence documents without making available those that prepared it for cross-examination?
- (vi) Does the record already show reversible error such that detriment to the public interest and unusual delay and expense could be saved by promptly changing Boards and/or having the appeal board provide firm direction to the licensing board so that the past errors are promptly corrected and others of the same kind do not occur?
- (vii) Should the present hearings be delayed until the above questions are answered by the Appeal Board?

Respectfully submitted,

James Morgan Scott, Jr.

James Morgan Scott, Jr.
Attorney for Tex FERG

CERTIFICATE OF SERVICE

The attached Motion was mailed to all parties (or hand delivered) and others required on Jan. 29, 1981.

James Morgan Scott, Jr.
James Morgan Scott, Jr.

ATTACHMENT 2

by way of directed certification^{1/} and (2) an order halting the progress of the hearing pending the outcome of that review. In addition, we are requested to direct a change in the composition of the Licensing Board.

1. We disapprove of the practice of simultaneously seeking Licensing Board reconsideration of interlocutory rulings and appellate review of the same rulings.

2. Should TexPIRG be dissatisfied with the Licensing Board's disposition of its motion for reconsideration, that party will then be free to file a petition for directed certification with this Board. In any such petition, TexPIRG must refer to the specific page or pages of the hearing transcript upon which each challenged ruling or action appears. Absent a precise record reference, the challenge will not be entertained by us.^{2/} Additionally, in determining the scope of the petition, TexPIRG

1/ See 10 CFR 2.718(i); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 482-83 (1975).

2/ The motion now before us is devoid of record references; it instead invites us to "read the complete record of the hearing to date (one week) * * *". The Commission's Rules of Practice specifically require those appealing from initial decisions both (1) to "identify with particularity the portion of the decision (or earlier order or ruling)" which is being challenged; and (2) to "specify, inter alia, the precise portion of the record relied upon in support of [each] assertion of error". 10 CFR 2.762(a). Assuredly no less is to be expected of a party asking that we exercise our discretion to review licensing board rulings in advance of the rendition of the initial decision.


would be well-advised to bear in mind our disinclination to assume "the role of a day-to-day monitor" of the "numerous determinations" which must be made by licensing boards "respecting what evidence is permissible and in what procedural framework it may be adduced". Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-314, 3 NRC 98, 99 (1976).

3. In pressing for the replacement of the entire Licensing Board assigned to the proceeding, TexPIRG asserts its doubt that "it can get a fair, impartial decision from [that] Board because of the obvious friction and tension between the Board and [its] attorney (no matter [whose] fault it is)". We need not pass now upon the substantiality of this assertion. A motion to remove (i.e., disqualify) one or more members of a licensing board must be first presented to that board in strict conformity with the provisions of 10 CFR 2.704(c). If denied, the motion then is to be routinely referred to us for determination of "the sufficiency of the grounds alleged". Ibid.

Directed certification and allied relief denied.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Bishop
Secretary to the
Appeal Board

ATTACHMENT 3

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



Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. John H. Buck
Christine N. Kohl

SEPPED FEB 4

1981

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

Docket No. 50-466

Dr. David Marrack, Bellaire, Texas, intervenor,
pro se.

MEMORANDUM AND ORDER

February 4, 1981

(ALAB-631)

David Marrack is one of a number of intervenors who are participants in this construction permit proceeding now in evidentiary hearing before the Licensing Board. Another participating intervenor is Wayne E. Rentfro.

During the course of the hearing session on January 23, 1981, Mr. Rentfro indicated a desire to pose two questions to an applicant's witness who was then testifying (Tr. 3841). Counsel for the applicant immediately interposed an objection on the ground that no part of the witness' testimony related to an issue within the scope of Mr. Rentfro's asserted interest in

the proceeding (ibid). In this connection, counsel relied upon our holding some years ago in the Prairie Island proceeding^{1/} to the effect that:

In both operating license and construction permit proceedings, an intervenor can and should be afforded the opportunity to cross-examine on those portions of a witness' testimony which relate to matters which have been placed into controversy by at least one of the parties to the proceeding — so long as that intervenor has a discernible interest in the resolution of the particular matter. [Emphasis supplied.]

In an accompanying footnote, we added:

For this purpose, the extent of the intervenor's interest in the proceeding is to be ascertained on the basis of those relevant assertions in the intervention petition which were explicitly or implicitly accepted by the Licensing Board in connection with the grant of intervention. ^{2/}

After entertaining responses to the objection, the Licensing Board sustained it on the ground assigned by applicant's counsel (Tr. 3845). Thereafter, by way of clarification at the request of NRC staff counsel, the Board Chairman observed that the ruling would have little application beyond Mr. Rentfro because "I don't know of any other intervenor whose discernible interest is so

^{1/} Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 868 (1974), reconsideration denied, ALAB-252, 8 AEC 1175 (1975), affirmed, CLI-75-1, 1 NRC 1 (1975).

^{2/} 8 AEC at 868, fn. 15.

miniscule and so limited and so restricted as is [his], which is very limited and restricted to adverse health impacts of high voltage transmission lines" (Tr. 3846). The Chairman did note that Dr. Marrack might "perhaps" be affected but added that "I'm not getting into that" (ibid.). Rather, he stressed, the ruling made by the Board applied only to Mr. Rentfro at that point; if the question arose again, "we will just have to rule on a party by party basis" (Tr. 3847).

What is now before us is a motion seeking review of the ruling under our directed certification authority. 10 CFR 2.718(i); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 482-83 (1975).^{3/} The movant is not, however, Mr. Rentfro or anyone purporting to represent him in this proceeding. Instead, the motion was submitted by Dr. Marrack acting on his own behalf.

For at least two independent reasons, directed certification must be denied.

1. As just seen, the Licensing Board confined its ruling to Mr. Rentfro and whether that ruling will ever have application to Dr. Marrack is at best conjectural. Dr. Marrack has no standing to press before this Board the grievances of other parties to the

^{3/} Although its caption refers to the Licensing Board, the body of the motion makes clear that it is addressed to this Board alone.

proceeding who are not represented by him. Puget Sound and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, 10 NRC 30, 32-33 (1979); Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-345, 4 NRC 212, 213 (1976). Nor is he entitled to complain himself of a licensing board ruling unless and until that ruling has worked a concrete injury to his personal interests. Prairie Island, ALAB-252, supra, 8 AEC at 1177; Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-157, 6 AEC 858, 859 (1973).

2. The question whether the Licensing Board correctly applied the Prairie Island cross-examination rule to Mr. Rentfro is scarcely worthy of our interlocutory examination. As we had occasion to reiterate in this proceeding just yesterday, we will not normally invoke our discretionary directed certification authority for the purpose of monitoring the day-to-day conduct of licensing board evidentiary hearings. ALAB-630, 13 NRC ____, ____ (slip opinion, p. 3).

In this connection, we do not understand Dr. Marrack to take issue with the Licensing Board's conclusion that Mr. Rentfro had not manifested a discernible interest in the matters to which the witness' testimony was addressed.^{4/} To the contrary, his


^{4/} We imply no opinion here on the correctness of that conclusion.

dissatisfaction appears to be with the "discernible interest" requirement itself and the fact that its first application in this proceeding was to Mr. Rentfro. We have been given no cause, however, to reconsider our imposition of that requirement in Prairie Island.^{5/} And there is no substance to the claim that the "ground rules" for the hearing were changed in "mid session". The evidentiary hearing had commenced on January 16 and, as the Licensing Board pointed out when the same claim was presented to it, the "discernible interest" issue simply had not earlier surfaced in connection with proposed intervenor cross-examination of witnesses for other parties (Tr. 3845).

Directed certification denied.

It is so ORDERED.

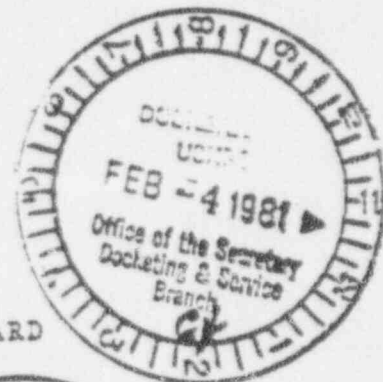
FOR THE APPEAL BOARD


C. Jean Bishop
Secretary to the
Appeal Board

^{5/} It might be noted that the entire Prairie Island rule, including the "discernible interest" requirement, received explicit Commission endorsement. CLI-75-1, supra, 1 NRC at 2.

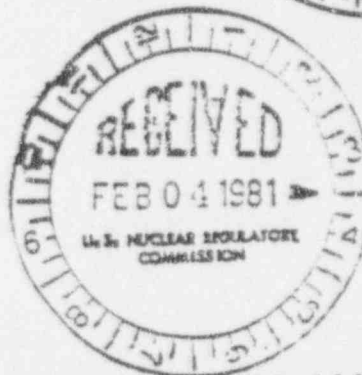
ATTACHMENT 4

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



Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. John H. Buck
Christine N. Kohl



Docket No. 50-466

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

Subject: Motion for Reversal of Denial of Cross Examination
for Intervenor Wayne E. Rentfro

On January 23, 1981 I was denied the opportunity for
cross examination on direct testimony of accepted contentions.

On January 29, 1981 a TWX was sent to your attention
requesting reversal of this denial. (copy attached)

This letter is to confirm the TWX of January 29, 1981,
and provide further discussion of the incident.

The denial appeared to emphasize the supposition that
I had no discernable interest in these hearings other than the
health hazards associated with high voltage transmission lines.

I submit that the boards supposition is erroneous.
The following is offered in support of this submission.

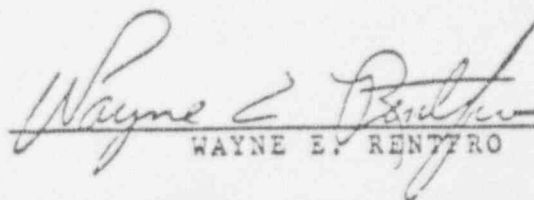
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL BOARD
January 30, 1981
Page #2

- 1) In March 1975 I attended the hearing at Wallis, Texas, and voiced my concerns about the plant.
- 2) In May, and June of 1975 I spent two days with an NRC Representative reviewing the proposed transmission corridors submitted in the environmental impact study. This led to the discovery that Houston Lighting & Power's submitted data was grossly in error and they were attempting to purchase right of way over one mile out of any proposed transmission corridor.
- 3) I have an extensive file of letters written to Local, State, and National Government Officials expressing my concerns about this facility.
- 4) The NRC Staff encouraged me to limit my contentions to the area I felt most concerned about, especially if other intervenors were introducing contentions on additional areas of concern. This philosophy was actualized by extensive consolidation of similar contentions.
- 5) I live approximately 20 miles from the proposed facility and own property within five miles of it.

I believe this information is sufficient to establish "discernable interest" to the point that I should be allowed normal intervenor status.


WAYNE E. RENTYRO

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of

HOUSTON LIGHTING & POWER
COMPANY

(Allens Creek Nuclear
Generating Station, Unit
No. 1)

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Docket No. 50-466

CERTIFICATE OF SERVICE

I hereby certify that copies of the motion for Reversal of Denial of Cross Examination were served on the following by deposit in the United States mail, 30th day of January, 1981.

Mr. Sheldon J. Wolfe, Chairman
Atomic Safety and Licensing
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Atomic Safety and Licensing
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
Certificate of Service - (Continued)
January 30, 1981
Page #2

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U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. William Schuessler
5810 Darnell
Houston, Texas 77074

Atomic Safety and Licensing
Board Panel
U. S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mr. D. Marrack
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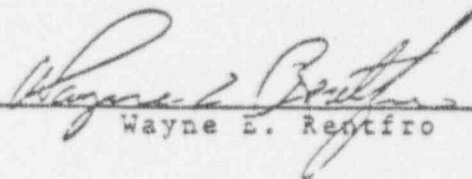
Mr. J. Morgan Bishop
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Ms. Carro Hinderstein
609 Fannin, Suite 521
Houston, Texas 77002


Wayne E. Rentfro

ZCZC 01 HOUSTON, TEXAS, 1/29/81

TWX 710 324-0415

ATTN: ATOMIC SAFETY & LICENSING APPEAL BOARD

CC: SHELDON WOLFE, ATOMIC SAFETY & LICENSING BOARD

BT

FROM: WAYNE E. RENTFRO

INTERVENOR IN THE MATTER OF HOUSTON LIGHTING AND POWER.
ALLENS CREEK NUCLEAR GENERATORY STATION UNIT 1
DOCKET NO. 50-466 CP.

REF: DIRECTED CERTIFICATION PER SEABROOK DECISION, 1 NRC-
478

SUBJECT: MOTION FOR REVERSAL OF DENIAL OF CROSS-EXAMINATION

NRC RULES OF PRACTICE PART 2, 5 MAY 78 APPENDIX 3, A,
3, PG. 2-30 PROVIDE FOR INTERVENOR CROSS EXAMINATION ON
DIRECT TESTIMONY OF ACCEPTED CONTENTIONS.

ON JAN. 23, 1981 I WAS DENIED THE OPPORTUNITY TO CROSS
EXAMINE THE DIRECT TESTIMONY OF THE APPLICANTS WITNESS
REF. HEARING TRANSCRIPT PG. 3844 LINE 11-19 AND 3845 LINE
13-20. CHAIRMAN WOLFF CITED APPEAL BOARD RULING PRARIE
ISLAND 7 NRC 528, 531, AND 8 NRC, 458, 857, AND 1175. AS
THE GROUNDS FOR DENIAL. THIS RULING ONLY APPLIED TO INTER-
VENORS ASKING QUESTIONS OF WITNESSES ON MATTERS WHICH WERE
NOT IN CONTENTION.

MY QUESTIONS WERE PROPER AND DIRECTED TO A MATTER
IN CONTENTION ON WHICH THE WITNESS SUBMITTED DIRECT TEST-
R. IMONY.

ACTION: REQUEST REVERSAL OF CHAIRMAN WOLFF'S RULING IN THIS
MATTER.

MAILING SIGNED MOTION TODAY

WAYNE E. RENTFRO
COMBAT GENERAL CORP.
77-5720

NNNN

8102060 280

ATTACHMENT 5

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

Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. John H. Buck
Christine N. Kohl

In the Matter of)

HOUSTON LIGHTING & POWER COMPANY)

(Allens Creek Nuclear Generating)
Station, Unit No. 1))

) Docket No. 50-466

Mr. Wayne E. Rentfro, Rosenberg, Texas, intervenor
pro se.

MEMORANDUM AND ORDER

February 5, 1981

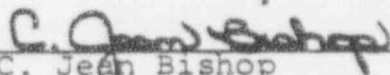
Wayne E. Rentfro, an intervenor in this construction permit proceeding now at hearing, has filed a motion asking that, on an interlocutory basis, we review and reverse a Licensing Board ruling which precluded him from cross-examining a witness for the applicant. That precise ruling was the subject of a decision rendered by us yesterday on the motion of another intervenor. ALAB-631, 13 NRC ____.

For the reason stated in the first full paragraph appearing on page 4 of the slip opinion in ALAB-631, 13 NRC at ____, Mr. Rentfro's motion is denied.^{1/}

^{1/} Mr. Rentfro's motion, dated January 30, 1981, reached us subsequent to the issuance of ALAB-631. Attached to it was a copy of a telegram which had been sent by him to
(FOOTNOTE CONTINUED ON NEXT PAGE)

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Bishop
Secretary to the
Appeal Board

1/ (FOOTNOTE CONTINUED FROM PREVIOUS PAGE)
this Board on January 29, 1981. That telegram, seeking the same relief as requested in the motion, was not received by us. That fact, however, has not worked to the prejudice of Mr. Rentfro. Nothing contained in the telegram would have affected any of the conclusions stated in ALAB-631.