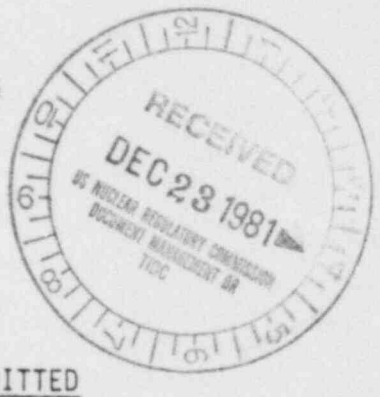
12/22/81

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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



NRC STAFF RESPONSE IN OPPOSITION TO TEXPIRG'S MOTIONS FOR (1) ADDITIONAL EVIDENCE, (2) FURTHER DEVELOPMENT OF RECORD, AND (3) NEW CONTENTIONS TO BE ADMITTED

I. INTRODUCTION

On December 7, 1981, during the final week of hearing TEXPIRG submitted a diverse and lengthy motion requesting the Board, in essence, to receive and consider new evidence on several issues. On December 9, 1981, the record in this proceeding was closed. Tr. 21326. The Board in closing the record recognized the existence of this outstanding motion and indicated that the record might be reopened to consider this "new evidence" if it should be deemed necessary and a proper showing is made. Tr. 21304. As one seeking to reopen a record, TEXPIRG has a heavy burden to show that the motion should be granted. Cf. Kansas Gas Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620 (1976).

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In deciding whether to receive additional evidence, consideration will be given to both the timing of the motion and the significance of

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the matter which has been raised. The motion may be denied, even if timely, if the movant has not demonstrated the matter raised is of "major significance." See Pacific Gas & Electric Co. (Diablo Canyon Nuclear Plant, Units 1 and 2), ALAB-598, 11 NRC 876, 879 (1980); Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-573, 10 NRC 775, 804 (1978); Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404, 413-414 (1975). As a general proposition, additional evidence should not be required merely because some detail involving plant construction or operation has been changed. Rather, to reopen a closed issue to require additional evidence at the request of a party, it must usually be established that the new evidence would lead the Board to reach a different conclusion. See Diablo Canyon, supra; Wolf Creek, supra; Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974). Even where an initial decision has not been rendered a record should only be reopened when one or more issues requires the receipt of further evidence for its resolution and the matter is of major significance. Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973); Public Service Co. of Oklahoma, supra.

In light of the above legal background, a motion to require the submission of additional evidence or to present witnesses for further examination should be granted only if it can be established that the issue is significant and that it could lead the Board to reach a different conclusion on the proffered evidence. See e.g., Georgia Power Co., supra; Public Service Co. of Oklahoma, supra; Vermont Yankee Nuclear Power Corp., supra. The following discussion will present the Staff's views on TEXPIRG's motion for additional evidence or testimony on (1) South Texas as an alternative site, (2) need for power, and (3) technical qualifications. As is evident from that discussion,

the Staff submits that TEXPIRG's motion should be denied in toto because it fails to meet the standards needed to reopen a record.

II. DISCUSSION

A. South Texas as an Alternative Site

TEXPIRG asserts that the recent change in the architect-engineer (A-E) at the South Texas Project (STP) from Brown and Root to Bechtel could cause the construction schedule to be extended significantly. It thus contends that construction delays at STP will enable construction workers at STP to "transfer to the construction of Allens Creek at the STP site without any social impact on the community." Motion, p. 2. TEXPIRG finally alleges that this fact is relevant and material to the Board's consideration of South Texas as an alternative site for Allens Creek.

TEXPIRG's argument does not logically follow. Even if it were clear that if the STP construction schedule were significantly delayed and Allens Creek is transferred to South Texas it does not appear that the three units would be built sequentially as TEXPIRG assumes. All three nuclear units, the two original STP units and the Allens Creek unit, would probably, under current construction forecasts, be in various stages of construction at the STP site at one time. This would necessitate a larger work force than for two units at the STP site. Accordingly, socioeconomic impacts as a result of worker in-migration would be greater at South Texas than at the separate Allens Creek site.

Secondly, TEXPIRG's argument ignores the Staff analysis of socioeconomic impacts at the STP site set forth in Supplement No. 2 to the FES

(Staff Ex. 13). In that analysis, the Staff found that the Allens Creek is preferable to site STP from the standpoint of socioeconomics. That conclusion was based on the assumption that construction currently in progress at STP will have been completed and the workers dispersed before the initiation of construction of a third unit. However, the Staff also recognized that construction at STP might be delayed and that construction activity properly phased with the start of a third unit at STP. Under this scenario, the Staff concluded that site STP would still be no more than equivalent to the Allens Creek site. This conclusion was based on the significant adverse fiscal impact on the areas where the construction workers for STP reside in contrast to the benefits to be enjoyed by the jurisdiction where the plant is located. This situation would be exacerbated if a third unit were to be constructed at STP. See Staff Ex. 13, pp. 2-65, 66; 2-55, 56; Tr. 10440. Thus, the delay in construction activities at STP has been properly accounted for in the Staff's assessment of South Texas as an alternative site for the Allens Creek unit which shows that STP is, at best, no more than equivalent to Allens Creek from a socioeconomic standpoint even should construction be optimally phased.

Third, the impact of the delays associated with the change in the A-E at STP is largely speculative. While some delay can logically be anticipated as a result of the change, the length of these delays is presently unknown. Bechtel has experience in the construction of large nuclear projects. Thus the effect of its substitution for the present A-E on the construction schedule cannot be gauged. In any event, the materiality of the socioeconomic impacts at STP is very questionable in

light of issues raised by the Staff concerning the effects of construction and operation of a third unit at the STP site on freshwater consumption and aquatic biota. Staff Ex. 13, pp. 2-55, 2-61-63; Tr. 10460, 10522-10523.

Finally, TEXPIRG has not alleged, let alone shown, that the purported delay and the purported change in the short-term, alter the assessment of socioeconomic impacts caused by the in-migration of workers sufficiently enough to make the STP site an "obviously superior" site to the Allens Creek location. Absent such a finding no basis would exist for the Board to reject the Allens Creek site. See Public Service Co. of New Hampshire (Seabrook Station, Units 1 & 2), CLI-77-8, NRC 503, 526 (1977).

In sum, TEXPIRG's motion for further evidence on South Texas as an alternative site for the Allens Creek unit should be denied. The premise for the motion is faulty in that any delay in the STP units and the building of a third unit at South Tex[illegible]xacerbate existing impacts due to the influx of additional workers. In any event, this delay scenario has been assessed by the Staff. Moreover, the supposed other environmental advantages of moving the Allens Creek project to the South Texas site even with the "delay scenario" is largely speculative in light of the very material questions concerning the effect that a third nuclear plant would have on ecology in the South Texas area. Finally, no allegation is made that the South Texas site could be "obviously superior" to the Allens Creek site. See Public Service Co. of New Hampshire, supra. Based on the foregoing analysis, it is abundantly clear that TEXPIRG has failed in its burden to show the significance of this issue or how any change in socio-economic impact considerations at STP could lead the Board to reach any

conservation would "save 25%." Motion, p. 3. This allegation is defective for several reasons. First, the allegation contains no facts regarding the study, what residential conservation will save 25% of, or how the conservation study will change existing evidence on the record regarding conservation. Secondly, it appears from TEXPIRG's allegations that the conservation study was completed prior to August 13, 1981. Thus it is clear that TEXPIRG could have presented these facts to the Board much earlier than December 7, 1981, the date of this motion. The absence of any specific facts in the motion with respect to the conservation study results in a total failure of TEXPIRG to meet its burden of showing the significance of this matter or how the results of the conservation study could lead the Board to a different conclusion on the need for power or conservation issues.

3. Co-generation. TEXPIRG alleges that co-generation plants have been announced recently which will generate 70 MW of electricity. It also alleges that this electricity will replace electricity that HL&P had forecast to supply. Staff submits that these bare allegations fall far short of meeting the burden necessary to reopen the record. First, these allegations fail to establish when these co-generation plants will be operating. Secondly, the allegations fail to establish whether HL&P has taken these co-generation facilities into account when forecasting its industrial load. Finally, it has not been established how the co-generation of 70 MW can change existing testimony on the need for this 1200 MW facility. Accordingly, TEXPIRG's motion to present further evidence on co-generation facilities should be denied.

4. Interconnection. TEXPIRG alleges that PL&P has recently agreed to interconnect with out-of-state utilities and, thus presumably, obviate the need for Allens Creek. However, this allegation completely ignores or disregards the testimony filed by both Applicant and Staff on whether interconnections could obviate the need for Allens Creek. See Testimony of D.E. Simmons, foll. Tr. 5131; NRC Staff Testimony on Alternative Energy Sources, pp. 50-53, foll. Tr. 6227. Absent any showing of how this testimony may be altered by any new evidence on interconnections, TEXPIRG's motion to present further evidence on this subject matter must be denied.

C. Technical Qualifications

TEXPIRG alleges that recent reports (the Quadrex Report) and newspaper articles have raised questions with respect to the Applicant's technical qualifications. An identical motion was submitted by Intervenor Doherty on October 15, 1981 and renewed, pursuant to a November 10, 1981 Board Order, on December 7, 1981. The Staff filed its response to the renewed Doherty motion on December 14, 1981 and urged the Board to deny the motion. For the reasons set forth in that response the Staff submits that the Board should deny TEXPIRG's motion for further evidence on the issue of technical qualifications. Particularly, TEXPIRG has failed in its burden to identify any shortcomings in the present reorganized management structure in light of the Quadrex Report, it has failed to demonstrate any inadequacy in the testimony on technical qualifications presented in this proceeding, and it has failed to establish how the Quadrex Report (which pertained largely to Brown and Root and STP) is relative to Ebasco

and the Allens Creek project. Given these substantial failures in meeting its burden to reopen the record on this issue, this motion must be denied.

III. CONCLUSION

For the foregoing reasons, TEXPIRG's motions for further evidence and development of the record for the above-listed basic issues must be denied. Since this motion must be denied, the other prayers for relief by TEXPIRG, i.e., (1) Order the Applicant to give TEXPIRG a copy of the Quadrex Report, (2) Rule that "need for power" is a TEXPIRG contention, relevant to several TEXPIRG contentions, and an issue in controversy, and (3) in the alternative, admit "need for power" as a late-filed TEXPIRG contention based on recent information, must also be denied.[1/]

Respectfully submitted,

Richard L. Black
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 22nd day of December, 1981.

1/ We do not understand the broad and confusing thrust of prayers (2) and (3) above. However, since they pertain to the issue of "need for power" which is not a litigated issue in this proceeding, and since TEXPIRG has failed to satisfy its burden of reopening the record, it follows that the prayers to have this issue admitted in this proceeding must also fail.

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(Allens Creek Nuclear Generating Station, Unit 1)	)	

NRC STAFF'S RESPONSE TO INTERVENOR'S DOHERTY'S MOTION FOR ADDITIONAL TESTIMONY ON NEED FOR POWER

On November 6, 1981, Intervenor Doherty filed a motion to require Applicant to submit additional testimony on need for power. The basis of this motion apparently stems from an attached newspaper article which reports that the City of Austin intends to sell its share of the South Texas Project (STP) nuclear plant in which the Applicant, Houston Lignting and Power Company (HL&P), is a co-owner. Applicant filed its response in opposition to this motion on November 20, 1981. The NRC Staff also urges the Board to deny the motion. Our position with respect to this motion is discussed below.

The environmental portion of this proceeding was completed, with a few exceptions, on May 15, 1981. Testimony on the "need for power" analysis was presented on February 9, 1981 and updated on September 26, 1981. See Testimony of J. D. Guy, foll. Tr. 5198; Testimony of J. D. Guy and John M. Edwards, foll. Tr. 16903. The scheduled receipt of evidence on this issue is now closed. Thus, Mr. Doherty's motion requesting additional testimony on need for power must be considered similar to a

motion to reopen the record. As upon a motion to reopen a record, Mr. Doherty has a heavy burden to show that the motion should be granted. Cf. Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 338 (1978); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-359, 4 NRC 619, 620 (1976).

In deciding whether to receive additional evidence, consideration will be given to both the timing of the motion and the significance of the matter which has been raised. The motion may be denied, even if timely (as the Doherty motion), if the matter raised is not grave or significant. Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Units 1 and 2), ALAB-291, 2 NRC 404 (1975); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523 (1973); Vermont Yankee, ALAB-126, 6 AEC 393 (1973); Vermont Yankee, ALAB-124, 6 AEC 365 (1973). As a general proposition additional evidence should not be required merely because some detail involving plant construction or operation has been changed. Rather, to reopen a closed issue to require additional evidence at the request of a party, it must usually be established that a different result would have to be reached should the material be introduced. See, Wolf Creek, supra; Northern Indiana Public Service Co., (Bailly Generating Station, Nuclear-1), ALAB-227, 8 AEC 416, 418 (1974). The late submission of additional evidence has also been ordered where the changed circumstances involved a "hotly contested" issue. Bailly, CLI-74-39, 8 AEC 631 (1974).[1/]

1/ It is noted that there is no contention in this proceeding dealing with the need for additional generating capacity. The Applicant has presented testimony on this issue to update the need for power analysis in the ER Supplement.

In light of the above legal background, a motion to require the submission of additional evidence should be granted only if it can be established that the issue is significant and that the Board would reach a different decision on need for power based on the new information pertaining to STP. With respect to the significance of the "need for power" issue, the NRC has long held that the need for a facility can be demonstrated either by a showing that there is a need for additional generating capacity to produce needed power or by a showing that the nuclear plant is needed as a substitute for plants that burn fossil fuels that are in short supply. New England Coalition on Nuclear Pollution v. NRC, 582 F.2d 87, 97-98 (1st Cir. 1978); Kansas Gas and Electric Company (Wolf Creek Generating Station, Unit 1), ALAB-462, 7 NRC 320, 327 (1978); Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 2), ALAB-254, 1 NRC 347, 353-54 (1975). Thus, justification for the need for a facility can be demonstrated by showing the need for the capacity to meet projected demand, or showing that the facility is needed to replace existing generating facilities that burn scarce or uneconomic fuels. In this case, the existing record shows that the need for Allens Creek can be established on both of these grounds. See Testimony of J. D. Guy and John M. Edwards, following Tr. 16903; Testimony of Lewis Perl, following Tr. 5964, p. 13; Testimony of J.W. Dick, foll. Tr. 6227, Table 8. Thus the questions Mr. Donerty attempts to raise relating to the need for

additional generating capacity alone do not supply a basis to reopen the record. See, Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), ALAB-443, 6 NRC 741, 748-751 (1977); Catawba, supra.

Moreover, it has been held that an issue is not presented which would warrant reopening or supplementing the record each time there is a change in the projected supply of or demand for electricity. The Appeal Board has explicitly recognized "that inherent in any forcast of future electrical power demands is a substantial margin of uncertainty." Nine Mile Point, supra at 1 NRC 365; Catawba, supra at 4 NRC 410. Thus, if new information does not alter or obviate the need for the nuclear facility in question, or where the proffered evidence does not show that the forecast is seriously defective or rests on a fatally flawed foundation, we believe that the issue of "need for power" is not significant enough to warrant supplementing the record. See Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-490, 3 NRC 234, 240-41 (1978). In both Perry, supra, and Catawba, supra, the Appeal Board upheld the Licensing Board's denial of motions to reopen and reconsider the need for power issue. In so doing, the Appeal Board emphasized that litigation in administrative proceedings must end at some point, and cited ICC v. Jersey City, 322 U.S. 503, 514 (1944), for the proposition that a record need not be reopened or supplemented on ever changing "need for power" issues "because some new circumstance has arisen, some new trend has been

observed or some new fact discovered . . .". See e.g., Perry, supra at 750, 751.

Finally, Mr. Doherty's motion fails to allege how the Board's finding on need for power could be changed by receipt and consideration of this new information. The motion is premised on the assumption that HL&P will ultimately purchase Austin's share of STP which amounts to approximately 385 MW. First, this assumption is faulty in that it is rank speculation to assume that HL&P will ultimately bid on and purchase this share of STP. More importantly, Mr. Doherty has not demonstrated that the purchase of Austin's share of STP by HL&P, if accomplished, would even affect, much less obviate, the need for the 1200 MW to be produced by Allens Creek. At best, it appears that the purchase of 385 MW would only obviate the need for HL&P to purchase power from other sources needed through the 1980's to meet its reserve requirements. Guy and Edwards, supra, Ex. JDG-1A. It would not obviate the need for Allens Creek either to meet demand forecasts and reserve requirements or to replace 4389 MW of existing gas-fired capacity. Id., p. 7. Accordingly, the motion does not, and probably cannot, demonstrate that HL&P's presumed purchase of Austin's share of STP will cause the Board to render a different decision on the "need for power" issue.[2/]

2/ As noted above, "need for power" is not a contention in this proceeding. If the Intervenor intended, by his motion, to add an issue in regard to the "need for power," he has failed to comply with 10 C.F.R. § 2.714(a) governing late filed contentions.

In summation, Mr. Doherty carries a heavy burden to demonstrate that the "need for power" issue should be supplemented in order for the Board to receive and consider new evidence pertaining to the City of Austin's intent to sell its share of STP. As discussed above, Mr. Doherty has not attempted to show how this issue is significant enough to warrant supplementing the record. Not only has he failed to meet this burden, but he has failed to demonstrate how the existing record, which establishes the need for Allens Creek, would be changed by receipt and consideration of the speculative new information pertaining to STP. Accordingly, Mr. Doherty's motion should be denied.

Respectfully submitted,

Richard L. Black

Richard L. Black
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 27th day of November, 1981.

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CERTIFICATE OF SERVICE

I hereby certity that copies of NRC STAFF'S RESPONSE TO INTERVENOR'S DOHERTY'S MOTION FOR ADDITIONAL TESTIMONY ON NEED FOR POWER in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 27th day of November, 1981.

Sheldon J. Wolfe, Esq., Chairman*
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. E. Leonard Cheatum
Administrative Judge
Route 3, Box 350A
Watkinsville, Georgia 30677

Mr. Gustave A. Linenberger*
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

The Honorable Ron Waters
State Representative, District 79
3620 Washington Avenue, No. 362
Houston, TX 77007

J. Gregory Copeland, Esq.
Baker & Botts
One Shell Plaza
Houston, TX 77002

Susan Plettman, Esq.
David Preister, Esq.
Texas Attorney General's Office
P.O. Box 12548, Capitol Station
Austin, TX 78711

Hon. Jerry Sliva, Mayor
City of Wallis, TX 77485

Hon. John R. Mikeska
Austin County Judge
P.O. Box 310
Bellville, TX 77418

Mr. John F. Doherty
4327 Alconbury Street
Houston, TX 77021

Mr. William J. Schuessler
5810 Darnell
Houston, TX 77074

Jack Newman, Esq.
Lowenstein, Reis, Newman &
Axelrad
1025 Connecticut Avenue, N.W.
Washington, DC 20037

Brenda A. McCorkle
6140 Darnell
Houston, TX 77074

Mr. Wayne Rentfro
P.O. Box 1335
Rosenberg, TX 77471

Leotis Johnston
1407 Scenic Ridge
Houston, TX 77043

Margaret Bishop
J. Morgan Bishop
11418 Oak Spring
Houston, TX 77043

Stephen A. Doggett, Esq.
Pollan, Nicholson & Doggett
P.O. Box 592
Rosenberg, TX 77471

Carolina Conn
1414 Scenic Ridge
Houston, TX 77043

Atomic Safety and Licensing
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing
Appeal Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

D. Marrack
420 Mulberry Lane
Bellaire, TX 77401

Texas Public Interest
Research Group, Inc.
c/o James Scott, Jr., Esq.
13935 Ivymount
Sugarland, TX 77478

Rosemary N. Lemmer
11423 Oak Spring
Houston, TX 77043

Carro Hinderstein
Houston Bar Center
723 Main Suite 500
Houston, TX 77002

U.S. Nuclear Regulatory Commission
Region IV, I&E
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76011

Bryan L. Baker
1923 Hawthorne
Houston, TX 77098

Robin Griffith
1034 Sally Ann
Rosenberg, TX 77471

Mr. William Perrenod
4070 Merrick
Houston, TX 77025

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Richard L. Black
Counsel for NRC Staff

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Sheldon J. Wolfe, Esq., Chairman*
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. E. Leonard Cheatum
Administrative Judge
Route 3, Box 350A
Watkinsville, Georgia 30677

Mr. Gustave A. Linenberger*
Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

The Honorable Ron Waters
State Representative, District 79
3620 Washington Avenue, No. 362
Houston, TX 77007

J. Gregory Copeland, Esq.
Baker & Botts
One Shell Plaza
Houston, TX 77002

Susan Plettman, Esq.
David Preister, Esq.
Texas Attorney General's Office
P.O. Box 12548, Capitol Station
Austin, TX 78711

Hon. Jerry Sliva, Mayor
City of Wallis, TX 77485

Hon. John R. Mikeska
Austin County Judge
P.O. Box 310
Bellville, TX 77418

Mr. John F. Doherty
4327 Alconbury Street
Houston, TX 77021

Mr. William J. Schuessler
5810 Darnell
Houston, TX 77074

Jack Newman, Esq.
Lowenstein, Reis, Newman &
Axelrad
1025 Connecticut Avenue, N.W.
Washington, DC 20037

Brenda A. McCorkle
6140 Darnell
Houston, TX 77074

Mr. Wayne Rentfro
P.O. Box 1335
Rosenberg, TX 77471

Leotis Johnston
1407 Scenic Ridge
Houston, TX 77043

Margaret Bishop
J. Morgan Bishop
11418 Oak Spring
Houston, TX 77043

Stephen A. Doggett, Esq.
Pollan, Nicholson & Doggett
P.O. Box 592
Rosenberg, TX 77471

Carolina Conn
1414 Scenic Ridge
Houston, TX 77043

Atomic Safety and Licensing
Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing
Appeal Board Panel*
U.S. Nuclear Regulatory Commission
Washington, DC 20555

D. Marrack
420 Mulberry Lane
Bellaire, TX 77401

Texas Public Interest
Research Group, Inc.
c/o James Scott, Jr., Esq.
13935 Ivymount
Sugarland, TX 77478

Rosemary N. Lemmer
11423 Oak Spring
Houston, TX 77043

Carro Hinderstein
Houston Bar Center
723 Main Suite 500
Houston, TX 77002

U.S. Nuclear Regulatory Commission
Region IV, I&E
611 Ryan Plaza Drive, Suite 1000
Arlington, TX 76011

Bryan L. Baker
1923 Hawthorne
Houston, TX 77098

Robin Griffith
1034 Sally Ann
Rosenberg, TX 77471

Mr. William Perrenod
4070 Merrick
Houston, TX 77025

Docketing and Service Section*
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Richard L. Black
Counsel for NRC Staff