

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

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

SERVED JUL 20 1982

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

Docket No. 50-466-CP

July 19, 1982

MEMORANDUM AND ORDER  
(Striking Doherty's Submission of July 12, 1982)

MEMORANDUM

In our Memorandum and Order issued on July 15, 1982, we denied the Doherty submission(s) of June 15, 1982 which we treated as being a motion to reconsider the Board's Order of June 2, 1982 and to reconsider once again a Board ruling. On July 15th, we received Intervenor Doherty's submission dated July 12th which was captioned "Amended Contention 59." Therein, in an effort to show that his motion to reopen the record of June 15, 1982 (which the Board had treated as

a motion to reconsider the Order of June 2nd) at least in part met governing case law,<sup>1/</sup> he amended his proposed Contention 59A to show that certain deficiencies in the Quadrex Report were relevant to safety.

Most certainly when he filed his motion to reopen the record on June 15, 1982, Mr. Doherty was well aware that the Board, in its Memorandum and Order of June 2, 1982, had denied his previous motion to reopen the record dated April 22, 1982, because, in part, he had failed to show the gravity or significance of the matters sought to be presented. Despite our ruling of June 2nd, Mr. Doherty failed once again on June 15th to sustain his burden of showing that his motion to reopen raised matters of major significance to plant safety. Instead, he held back from providing this information until his instant submission of July 12th. We will not permit this strategy to succeed because to do so would be to have wasted the time not only of the Applicant and the Staff, which had filed responses respectively on June 28 and July 2, 1982, but of the Board as well which issued its Memorandum and Order on July 15th. Moreover, to condone this strategy would result in

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1/ Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-138, 6 AEC 520, 523, reconsider. den., ALAB-141, 6 AEC 576 (1973)

additional briefing by Applicant and Staff and would serve to further delay our preparation and issuance of the initial decision in this case.<sup>2/</sup>

Again, most certainly when Mr. Doherty filed his motion to reopen the record on June 15, 1982, he was well aware that the Board, in its Memorandum and Order of June 2, 1982, had granted Applicant's motion to strike his reply of May 14, 1982 since 10 C.F.R. § 2.730(c) did not authorize such a response. However, relying upon an Appeal Board decision,<sup>3/</sup> Mr. Doherty concluded that, by separately filing on June 15th his proposed Contention 59 and his motion to reopen the record, he could, without requesting leave to do so, file the instant "Amended Contention 59" as a response to Applicant's and Staff's responses respectively filed on June 28 and July 2, 1982. The Intervenor is in error. ALAB-565 stands solely for the proposition that intervenors and prospective intervenors should be afforded an

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<sup>2/</sup> In order that the interested parties would know what disposition the Board had made with respect to the Doherty motion to reopen of June 15, 1982 and in order to avoid delay and the needless expenditure of time and effort, the Chairman's secretary phoned Messrs. Copeland, Newman and Black on July 15, 1982. Since Mr. Doherty was unavailable, Mr. Copeland was requested to relay the contents of the conference call to Mr. Doherty. The Chairman's secretary stated (1) that on July 15th, the Board denied the Doherty submissions of June 15th, and (2) that the Board shortly would rule on Mr. Doherty's submission of July 12th, which had just been received, and that there was no need for Applicant or Staff to respond to said submission.

<sup>3/</sup> Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-565, 10 NRC 521 (1979).

opportunity at the intervention stage of a proceeding to respond to objections to their proposed contentions. In the instant case, the record had been closed on April 14, 1982, and pursuant to the guidelines provided in Vermont Nuclear Power Corp., supra, on June 2, 1982, we had denied the Doherty motion to reopen the record and on July 15th we denied his motion to reconsider our Order of June 2nd. Thus, the instant submission was unauthorized because, despite its caption, it was in fact a response to Applicant's and the Staff's responses respectively filed on June 28 and July 2, 1982. See 10 C.F.R. § 2.730(c).

ORDER

For the foregoing reasons, it is this 19th day of July 1982

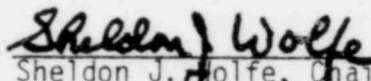
ORDERED

1. That, upon the Board's own motion, the Doherty submission of July 12, 1982, captioned "Amended Contention 59," is stricken, and
2. That Mr. Doherty shall not submit any further pleadings or correspondence directed to the subject matters of the instant

Memorandum and Order or of the earlier ones dated June 2 and July 15, 1982. If submitted, they will not be docketed and will be returned to Mr. Doherty.

Judges Cheatum and Linenberger concur but were unavailable to sign this issuance.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Sheldon J. Wolfe, Chairman  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland,  
this 19th day of July, 1982.