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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION \*85 MAR 18 P3:46

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges  
Charles Bechhoefer, Chairman  
Dr. James C. Lamb  
Ernest E. Hill

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

**SERVED MAR 19 1985**

In the Matter of  
HOUSTON LIGHTING AND  
POWER COMPANY, ET AL.  
(South Texas Project  
Units 1 and 2)

Docket Nos. STN 50-498 OL  
STN 50-499 OL

ASLBP No. 79-421-07 OL

March 15, 1985

MEMORANDUM  
(Explanation for Declining Sua Sponte  
Review of Contentions 5-8)

On February 6, 1985, the Appeal Board, inter alia, affirmed our ruling<sup>1</sup> denying the request of Citizens Concerned About Nuclear Power, Inc. (CCANP), an Intervenor, to adopt four contentions (numbers 5-8) initially sponsored by Citizens for Equitable Utilities, Inc. (CEU), a former Intervenor. ALAB-799, 21 NRC \_\_\_\_\_. However, the Appeal Board remanded the matter to us to consider the appropriateness of our reviewing those issues sua sponte, pursuant to our authority under

<sup>1</sup> LBP-82-91, 16 NRC 1364 (1982).

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10 C.F.R. § 2.760a. The remand based its sua sponte query on our statement in our Memorandum and Order of August 3, 1979, that certain late-filed contentions raised "significant safety or environmental issues" which should be taken into account in our balancing of the factors applicable to late-filed contentions. For reasons hereafter set forth, we do not at this time find that Contentions 5-8 warrant our sua sponte review.

I. Background

Prior to discussing Contentions 5-8<sup>2</sup> individually, some background of our August 3, 1979 ruling and the applicability of the "significant \* \* \* issues" statement to particular contentions is warranted. All of those contentions were originally included among those which CEU submitted in its initial intervention petition. In our April 3, 1979 Prehearing Conference Order, we accepted CEU's late-filed petition on the basis of a balancing of factors which did not rely, per se, on the significance of any of the particular contentions proffered. LBP-79-10,

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<sup>2</sup> The CEU contentions which were accepted as Contentions 5-8 were originally numbered as follows:

<u>Contention as accepted</u>	<u>CEU contention(s) from which derived</u>
5	2-3 (combined)
6	5
7	7
8	8

9 NRC 439, 467-68, aff'd., ALAB-549, 9 NRC 644, 650-51 (1979). In that Order, we accepted two of CEU's contentions (later identified as numbers 4 and 6). LBP-79-10, supra, 9 NRC at 463-65. We deferred ruling on CEU's remaining contentions and called upon CEU to provide further specificity to enable us to ascertain their acceptability as contentions. We also permitted (indeed, encouraged) CEU to particularize further the two contentions we had already accepted. Id. at 464, 468-69.

When CEU supplied this further information, it expanded the scope of certain of the original contentions. This was the case with respect to contentions which we later designated as Contentions 1.4, 1.5, 1.6, 1.7(a-e), 4 and 7. For these broadened contentions, we deemed it necessary to balance again the factors applicable to late-filed contentions. 10 C.F.R. § 2.714(a). These were the particular contentions which we referred to in our August 3, 1979 Memorandum and Order as raising "significant safety or environmental issues". All of these contentions except 7 have either been litigated in Phase I or scheduled for litigation in Phase II. The contentions designated 5, 6 and 8 were not considered as late-filed at the time of our August 3, 1979 issuance and hence were not among those to which the late-filed factors or our "significant \* \* \* issues" statement was applicable.

## II. Applicable Law

With that background, we turn to the considerations which prompt us not to exercise sua sponte review of Contentions 5-8. In general, in

considering whether to undertake such review in an operating license proceeding (such as this), we are constrained from reviewing any issue sua sponte unless a "serious safety, environmental, or common defense and security matter exists." 10 C.F.R. § 2.760a (emphasis supplied). As we pointed out some time ago, we must also advise the Commission of our intent to consider an issue sua sponte. LBP-81-54, 14 NRC 918, 922-23 and n.4 (1981); see also ALAB-799, supra, 21 NRC at \_\_\_, n.111. When so advising the Commission, we must provide more than a conclusory statement of the issue's significance. Texas Utilities Generating Co. (Comanche Peak Steam Electric Station, Units 1 and 2), CLI-81-24, 14 NRC 614 (1981).

Furthermore, the circumstance that a particular contention has already been admitted to a proceeding is not in itself sufficient to satisfy the standard for sua sponte review. Comanche Peak, supra, CLI-81-36, 14 NRC 1111, 1114 (1981). Nor is the incompleteness of Staff review of the issue. Id. at 1113; see also Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), CLI-84-3, 19 NRC 555, 562-63 (1984). However, unlike the situation where a board is considering admission of a late-filed contention proposed by a party (see ALAB-799, supra, 21 NRC at \_\_\_ (slip op., p. 38, n.108)), a board may take into account the pendency and likely efficacy of NRC Staff non-adjudicatory review in determining whether or not to invoke its sua sponte review authority. Cincinnati Gas and Electric Co. (Wm. H. Zimmer Nuclear Power Station, Unit No. 1), CLI-82-20, 16 NRC 109 (1982), reconsideration denied, CLI-83-4, 17 NRC 75 (1983); Cleveland Electric

Illuminating Co. (Perry Nuclear Power Plant, Units 1 & 2), LBP-83-75, 18 NRC 1254 (1983); cf. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-732, 17 NRC 1076, 1111-14 (1983).

### III. Discussion of Contentions

#### A. Contention 7: Make-up Water

Turning to the issues remanded for our further consideration, we begin first with Contention 7, one of those which we had deemed to be "significant" in our August 3, 1979 Memorandum and Order. That contention raises a safety issue with respect to the availability of make-up water for the main cooling reservoir, claiming that soil conditions peculiar to the STP area, inadequate water flow in the Colorado River, and diminishing groundwater supply would prevent the cooling pond from being maintained at a sufficient level.

In its answers to Applicants' interrogatories filed April 23, 1980, at p. 21 et seq., CEU explained that its concern was the "numerous sand pockets that are similar to quicksand" which it asserted were present in the STP area. In the current version of the FSAR, the Applicants have addressed the general question of seepage from the cooling reservoir. See, e.g., FSAR, §§ 2.4.8.2.5, 2.4.11, 2.4.13.3.2.3, 2.5.6.2.1, 2.5.6.6; see also § 9.2.5.1.4.1. In that connection, the FSAR provides, inter alia, as an operating requirement, "that the power plant will be shut down if and when the reservoir water level drops below" a specified elevation. FSAR (Amendment 43), § 2.4.11, at p. 2.4-44.

While we express no opinion as to the adequacy of the FSAR treatment of seepage from the cooling water reservoir, including the referenced technical specification (which, we might note, should possibly include plant shutdown factors other than water level, such as water volume and/or temperature), we are confident that the subject is being given serious consideration by the Applicants. Moreover, standards for adequate cooling water supply are set forth in the Staff's Standard Review Plan. NUREG-0800 (Rev. 2), § 2.4.11 (Cooling Water Supply). We would expect that the Staff would deal with this subject in its Safety Evaluation Report (or supplements). Absent any indication that the Staff's review will not be adequate, we find no persuasive reason at this time for our considering this issue sua sponte.

B. Contentions 5, 6 and 8

With respect to Contentions 5, 6 and 8, concerning which we have not previously made a significance determination, there is even less warrant for our considering sua sponte review.

1. Contention 5: Bioaccumulation of Radionuclides

Contention 5 claims that the Staff's treatment in the construction-permit FES (NUREG-75/019, § 5.4.1.3, "Dose rate estimates") of bioaccumulation of radionuclides in aquatic organisms was inadequate or in error. It cites several generalized evaluations of that subject, some of which post-dated the construction-permit FES.

The Applicants have updated the information on this subject in their operating license Environmental Report (OL ER). See § 5.2.3

of that Report. Among other authorities, the Applicants are relying on an early version of Reg. Guide 1.109. Although the authorities cited by the Applicants in their OL ER do not include any of those specified by CEU in its contention or its responses to interrogatories, we note that at least one of those authorities is referenced in the most recent version of Reg. Guide 1.109 (Rev. 1, Oct. 1977). We would anticipate that the Staff, in preparing its operating-license DES and FES, would employ Reg. Guide 1.109 and also would analyze any of the information referenced by CEU which was of significance to the dose-rate estimates to be reached by the Staff. For that reason, we do not regard sua sponte review of Contention 5 by this Board to be warranted.

2. Contention 6: Radionuclide Deposition Rates

Contention 6 questions calculations of radionuclides deposition rates by the Staff and Applicants, used to determine compliance with 10 C.F.R. Part 50, Appendix I, as not taking into account the relatively high and continual humidity in the STP area. When we accepted this contention in our April 3, 1979 Prehearing Conference Order, we pointed to Applicants' claims that humidity had in fact been taken into account; but we declined to consider those claims because, in our view, they related to the merits of the contention and not to its acceptability. LBP-79-10, supra, 9 NRC at 465; see also Applicants' Response to Petition for Leave to Intervene of Citizens for Equitable Utilities, Inc., dated March 2, 1979, at 11.



In considering whether to litigate this contention sua sponte, we have, however, examined the material cited by the Applicants. As they claim, § 2.6 ("Meteorology") of the construction-permit environmental report (ER) did in fact take into account relative humidity in the area. See § 2.6.2.2.1.5 (p. 2.6-11) and Tables 2.6-18, 2.6-19, 2.6-20 (pp. 2.6-37, 2.6-38, 2.6-39), the sections of the ER cited by the Applicants. The operating-license ER updated the meteorological information, but added only limited information bearing on humidity. See OL ER, § 2.6 (p. 2.6-1) and Table 2.6-25 (p. 2.6-26). We understand CEU's major concern to have been the distance from the STP site of the humidity recordings relied upon in the construction-permit ER. See CEU answers to Applicants' interrogatories, dated April 23, 1980, at 19. Although we express no opinion as to the adequacy or sufficiency of the data provided by the Applicants, particularly the data in the construction-permit ER derived from locations somewhat distant from STP--for example, Corpus Christi, Texas, a location apparently more than 100 miles from the site, and Galveston and Victoria, Texas, apparently over 50 miles from the site--we assume the Staff will consider humidity effects in its OL review, including the adequacy and sufficiency of data currently relied upon by the Applicants. We also find no basis in the information supplied by CEU to warrant our retaining the issue sua sponte.



3. Contention 8: Evacuation Plan

Contention 8 claims that the evacuation plan does not, but should, include an elementary school and a number of residences in Matagorda, Texas, approximately 8 miles from the site and outside the Low Population Zone (LPZ). The contention also questions the feasibility of evacuation from those areas, on the ground that persons would have to begin their evacuation by traveling toward the plant.

At the time this contention was accepted, NRC rules required an emergency plan (including evacuation) only for the LPZ. Other areas could be included on a showing of special circumstances. Contention 8 was an effort to demonstrate that such circumstances were present with respect to Matagorda.

The NRC rules have since been amended. Emergency Planning Zones (EPZs) must now extend "about 10 miles" in radius from a plant (10 C.F.R. §§ 50.47(b)(10), (c)(2) and 10 C.F.R. Part 50, Appendix E, § I, n.1) and thus, for STP, would have to include Matagorda. The proposed emergency plan submitted by the Applicants on December 26, 1984 (ST-HL-AE-1160) in fact includes plans for the Matagorda area, including its elementary school. See, e.g. §§ 2.7.1.3, 2.7.1.6, Attachment 2 (Items 8 and 15), and Attachment 16 (pp. 16-11, 16-15, 16-23 through 16-25). Insofar as Contention 8 seeks to include Matagorda in the coverage of the STP emergency plan, therefore, the contention appears to be moot.


To the extent that Contention 8 questions the effectiveness of evacuation of Matagorda because of the necessity of traveling toward the plant, the claim appears to have been based on AEC and NRC

adjudicatory decisions which raised that same question. See Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-248, 8 AEC 957, 963 (1974); The Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 81 (1979). More recently, however, the Appeal Board has made it clear that the fact that evacuation of particular individuals would require them to begin their journey by heading toward a plant will not necessarily be fatal to the effectiveness of an emergency plan. The effectiveness of any plan will depend upon the particular circumstances in question. Fermi, supra, ALAB-730, 17 NRC 1057, 1069-72 (1983).

We express no view, of course, on the adequacy of the Applicants' proposed emergency plan. Indeed, defined evacuation routes have not yet been submitted to the Staff for review. See cover letter dated December 26, 1984, at 2, and Attachment 17 to Emergency Management Plan. Given the circumstances we have described, however, together with the extensive review of the emergency plan which will be undertaken both by the NRC Staff and by the Federal Emergency Management Agency (FEMA), we find no warrant for considering Contention 8 sua sponte.

In summary, we find no persuasive reason for undertaking sua sponte review of any of CEU's former Contentions 5-8. We are providing copies of this Memorandum to the Appeal Board.

FOR THE ATOMIC SAFETY AND  
LICENSING BOARD

  
Charles Bechhoefer, Chairman  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 15th day of March, 1985