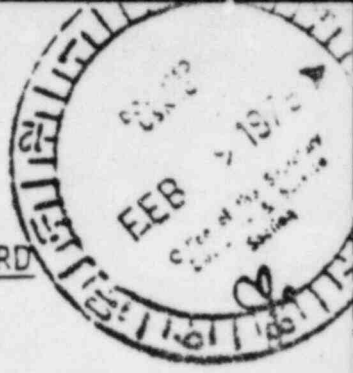

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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)	)	

ORDER

On December 22, 1978, a petitioner for leave to intervene, the Texas Public Interest Research Group (PIRG), filed a Motion For Certification Of Questions To The Appeals Board. On January 5, 1979, another petitioner for leave to intervene, Ms. Kathryn Hooker, filed a statement supporting PIRG's instant Motion.[1/] On January 5 and January 11, 1979, the Applicant and the Staff respectively filed Responses opposing PIRG's Motion.

PIRG requests that we certify to the Appeal Board three questions relating to the scope of our Order of August 14, 1978 and the Corrected Notice of Intervention Procedures published on September 11, 1978 (43 Fed. Reg. 40328). In said Order and Corrected Notice we had limited

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1/ We do not reach and decide whether petitioners for leave to intervene as contrasted to parties, have standing to seek appellate review.

the scope and thrust of proposed contentions to those matters that had arisen because of changes in the proposed plans for the Allens Creek Plant, and to new evidence or new information that had not been available prior to the date of the Appeal Board's Memorandum and Order of December 9, 1975, ALAB-301, 2 NRC 853 (1975).[2/]

The first two questions sought to be certified query whether the Board may deny admission to contentions which do not arise from evidence not available at the time of the Appeal Board's review of the Partial Initial Decision and which were not based on new evidence even though such contentions had not been determined or considered in the Partial Initial Decision.[3/] The third question queries whether, if the

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2/ The background leading to PIRG's instant Motion is detailed in our Memorandum and Order issued on November 30, 1978. (In passing we note that PIRG thereafter filed a Bill of Exceptions on December 7, 1978. Both Applicant and Staff deemed PIRG's submission to be a motion for reconsideration and opposed it. However, in its instant Motion, PIRG advises that it filed exceptions to our Memorandum and Order merely to preserve objections for appeal. Accordingly no action need be taken on said filing).

3/ Ms. Hooker's statement urges that we refer PIRG's questions because no issues of health or safety were considered in our Partial Initial Decision of November 11, 1975, 2 NRC 776, except those which related to site suitability, and thus our limitations upon the admissibility of contentions would result in an inadequate record. As discussed in our Memorandum and Order of November 30, 1978, since none of the current petitioners for leave to intervene had either filed petitions for leave to intervene by January 2 1974 or thereafter filed motions for leave to file untimely petitions for leave to intervene, the Board could have proceeded to hear the evidence adduced by the Applicant and Staff and rendered its decision upon health and safety and upon environmental issues. Thus the current petitioners cannot be heard to argue that the Board is at fault and that their basic rights to be heard are being violated.

Board's limitations were proper, should the date for determining whether evidence or information is new be January 28, 1974, when petitions for leave to intervene were required to be filed as set forth in the Notice Of Hearing On Application For Construction Permits, or December 9, 1975, when the Appeal Board issued its Memorandum and Order affirming this Board's Partial Initial Decision. 4/

The Commission's rule, 10 C.F.R. § 2.730(f) does not permit interlocutory appeals from a ruling of the presiding officer unless, in the judgment of the presiding officer, a prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense. PIRG has failed to make such a showing. Absent a showing of sufficiently extraordinary circumstances or of some important or overriding issue of law or policy, the Appeal Board has held that it would not involve itself

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4/ Since we have ruled on the first two questions, we treat the instant submission as a motion for referral pursuant to 10 C.F.R. § 2.730(f) rather than as a motion for certification pursuant to 10 C.F.R. § 2.718(i). The third question, not having been previously raised, is considered under § 2.718(i). The standards for consideration are the same under both sections. Compare Public Service Company of New Hampshire, et. al. (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478 (1975), with Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-116, 6 AEC 258 (1973). We deny certification of the third question because PIRG does not favor us with a discussion explaining its position and showing reasons why the question should be certified.

in a proceeding at the interlocutory stage. Public Services Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 483 (1975); Commonwealth Edison Company (Zion Station, Units 1 and 2), ALAB-116, 6 AEC 258, 259 (1973). PIRG merely asserts that a resolution now of its questions would prevent future delay which might occur if, at a later date upon appeal, the Appeal Board reversed and remanded the case for further proceedings on contentions excluded by the terms of our Order of August 14, 1978 and of the Corrected Notice of Intervention Procedures. However. there is nothing unusual about such an eventuality, and the Appeal Board has held that it cannot examine every interlocutory ruling of a licensing board, immediately upon its rendition, simply to guard against the materialization of such a contingency. Commonwealth Edison Co., supra, at page 259; accord, Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-393, 5 NRC 767 (1977).

The instant motion is denied.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Sheldon J. Wolfe, Esquire
Chairman

Dated at Bethesda, Maryland
this 9th day of February, 1979.