

NRC PUBLIC DOCUMENT ROOM

10/26/78

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOUSTON LIGHTING & POWER COMPANY

(Allens Creek Nuclear Generating
Station, Unit 1)

Docket No. 50-466



NRC STAFF'S RESPONSE TO PETITION FOR LEAVE
TO INTERVENE OF THE NATIONAL LAWYERS GUILD

The NRC Staff opposes the petition for leave to intervene filed by the National Lawyers Guild, Houston Chapter (the Guild) on October 11, 1978.

I. STANDING

The Commission's Rules of Practice 10 CFR §2.714(a)(2), require that petitioners state with particularity their interest in the proceeding and how that interest may be affected by the results of that proceeding. Intervention as a matter of right in Commission licensing hearings is governed by judicial concepts of standing, which require that the petitioner demonstrate a personal interest in the outcome of the proceeding and that the interest is at least arguably within the "zone of interests" protected by the statute invoked. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-614 (1976). An organization has standing to intervene if it can show that it or its members have such an interest. Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976).

7811140094

When an organization's standing is based upon the interests of its members, it must identify individual members, describe specifically how their interests will be affected by the proposed action and demonstrate that the members have authorized the organization to act on their behalf. Allied General Nuclear Services et. al. (Barnwell Fuel Receiving and Storage Station) ALAB-328, supra at 420; Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units 1 and 2) ALAB-136, 6 AEC 487, 488-89 (1973); Duquesne Light Company et al. (Beaver Valley Power Station, Unit 1) ALAB-108, 6 AEC 243, 244 at n. 2 (1973). In addition, one claiming to represent an organization must make clear that he has been authorized by that organization to represent it, since a petitioner in an NRC proceeding normally may assert only his interests, not those of third parties. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2) ALAB-413, 5 NRC 1418, 1421 (1977); Allied General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station) LBP-75-60, 2 NRC 687, 690 (1975).

Judged by these standards, the petition of the Guild is insufficient to meet the requirements of 10 CFR §2.714. First, although the petition is signed by Mr. Alan Vomacka, supposedly on behalf of the Guild, it is unclear exactly whom Mr. Vomacka represents. In various paragraphs, Mr. Vomacka alleges representation of the members of the National Lawyers Guild (Para. 4),

clients of members (Para. 5), citizens of various counties in Texas (Para. 6), rank and file workers who are members of labor unions (Para. 9), unorganized workers who are not members of labor unions (Para. 10 consumers of power generated by the Applicant (Para. 11), the Armadillo Coalition of Texas (Para. 12),^{1/} and the Mockingbird Alliance (Para. 12). It is a basic legal principle that one party may not represent another without express authority to do so. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1) LBP-77-11, 5 NRC 481 (1977). No such authority has been demonstrated here.^{2/}

Since no formal petitions for leave to intervene have been filed by any of the above groups save the National Lawyers Guild, Mr. Vomacka may only be entitled to represent the Guild in this proceeding. However, even his allegations of interest on behalf of that group are defective. In the first place, there is no indication in the petition that the Guild has authorized Mr. Vomacka to represent it in this proceeding. Secondly, although general allegations are made that members of the group reside in "close proximity" to the proposed site, no members of the group are identified, their proximity to the plant is not specified, and

^{1/} The claimed representation of the Armadillo Coalition may come as a surprise to Mr. John Doherty, who is the representative of record for that group.

^{2/} Even were there such authorization, Mr. Vomacka has filed no notice of appearance pursuant to 10 CFR §2.713. The Staff therefore assumes that he is not an attorney; thus, he could represent only the Guild in any event.

their specific interests (and how those interests may be affected by this proceeding) are not particularized. For that matter, none of this information is set forth even for Mr. Vomacka, the claimed representative of the group.

II. CONTENTIONS

The nine contentions advanced by the Guild are patently improper for adjudication in this proceeding. None of the contentions are sufficiently specific to meet the requirements of 10 CFR §2.714. In addition, Contentions 1, 2, 3 and 6 are challenges to the limitations on radioactive releases and doses set forth in 10 CFR Parts 20 and 50 (Appendix I). Contentions 5, 7, 8 and 9 deal with matters involving rate-setting, labor-management problems, and allegations of possible criminal activity which are beyond the jurisdiction of the Board. Contention 4 is totally vague and lacking in the specificity mandated by 10 CFR §2.714; the Guild does not explain the manner in which the fish, animals and plant life will be adversely affected by the reduction in size of the cooling lake. In addition, none of the contentions appears to be based upon new information or the change from two units to one, with the possible exception of Contention 4. This nexus between "new information" and proper contentions is required by the "Corrected Notice of Intervention Procedures," supra.

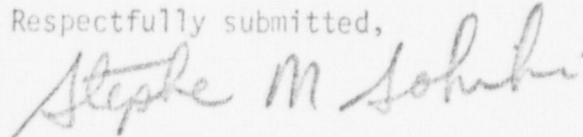
III. DISCRETIONARY INTERVENTION

The Guild's petition contains no facts from which one could find that it should be granted the status of an intervenor as a matter of discretion. The paramount factor to be considered in determining whether participation as a discretionary matter should be allowed is whether such participation would likely produce a valuable contribution to the decisionmaking process. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 615 (1976). No special expertise with regard to the issues to be decided by this Board has been demonstrated by the Guild; none is apparent from a reading of the petition. Indeed, the petitioner has failed to specify any issues which would be proper for adjudication in this proceeding. Moreover, there is no indication that the Guild has any expertise in areas which would be proper subjects for this Board to consider.

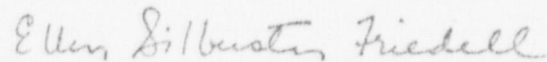
III. CONCLUSION

For all of the above reasons, the Staff opposes the Guild's petition in its present form.^{3/}

Respectfully submitted,



Stephen M. Sohinki
Counsel for NRC Staff



Ellen Silberstein Friedell
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 26th day of October, 1978

^{3/} Pursuant to 10 CFR §2.714, the petitioner may amend its petition without leave of this Board until fifteen days prior to the special prehearing conference.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

HOUSTON LIGHTING & POWER COMPANY)

(Allens Creek Nuclear Generating
Station, Unit 1))

Docket No. 50-466

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO PETITION FOR LEAVE TO INTERVENE OF THE NATIONAL LAWYERS GUILD" 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 26th day of October, 1978:

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

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

Mr. Glenn O. Bright*
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

R. Gordon Gooch, Esq.
Baker & Botts
1701 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

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

Robert Lowenstein, Esq.
Lowenstein, Reis, Newman & Axelrad
1025 Connecticut Avenue, N.W.
Washington, D. C. 20037

Richard Lowerre, Esq.
Asst. Attorney General for the
State of Texas
P. O. Box 12548
Capitol Station
Austin, Texas 78711

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

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

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

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

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

Mr. John F. Doherty
Armadillo Coalition of Texas,
Houston Chapter
4438 1/2 Leeland Avenue
Houston, Texas 77023

T. Paul Robbins
600 W. 28th #102
Austin, Texas 78705

Mr. D. Michael McCaughan
Member
The Environmental Task Force
3131 Timmons Ln. Apt. 254
Houston, Texas 77027

Mr. John R. Shreffler
5014 Braeburn
Bellaire, Texas 77401

Ms. Shirley Caldwell
14501 Lillja
Houston, Texas 77060

Mr. Robert S. Framson
4822 Waynesboro Drive
Houston, Texas 77035

Carro Hinderstein
8739 Link Terrace
Houston, Texas 77025

Ms. Ann Wharton
1424 Kipling
Houston, Texas 77006

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

James Scott, Jr., Esq.
Texas Public Interest
Research Group, Inc.
Box 237 UC
University of Houston
Houston, Texas 77004

Mr. Emanuel Baskir
5711 Warm Springs Road
Houston, Texas 77035

Mrs. R. M. Bevis
7706 Brykerwoods
Houston, Texas 77055

Mr. F. H. Potthoff, III
1814 Pine Village
Houston, Texas 77080

Brenda A. McCorkle
6140 Darnell
Houston, Texas 77074

Steven Gilbert, Esq.
Van Slyke & Gilbert
Attorneys at Law
500 Morton Street
Richmond, Texas 77469

Mr. Jean-Claude De Bremaecker
2128 Addison
Houston, Texas 77030

Mr. Brent Miller
4811 Tamarisk Lane
Bellaire, Texas 77401

Mr. Allen D. Clark
5602 Rutherglenn
Houston, Texas 77096

D. Marrack
420 Mulberry Lane
Bellaire, Texas 77401

Dr. Joe C. Yelderman
Box 303
Needville, Texas 77461

Ms. Kathryn Hooker
1424 Kipling
Houston, Texas 77006

Ms. Patricia L. Day
2432 Nottingham
Houston, Texas 77005

Mr. David Marke
3940 Warehouse Row
Suite C
Austin, Texas 78704

Ms. Madeline Bass Framson
4822 Waynesboro Drive
Houston, Texas 77035

Charles L. Michulka
Attorney at Law
P.O. Box 882
Stafford, TX 77477

Gregory Kainer
11118 Wickwood
Houston, TX 77024

Ms. Lois H. Anderson
Mr. John V. Anderson
3626 Broadmead
Houston, Texas 77025


Mr. Lee Loe
1844 Kipling
Houston, Texas 77098

Mr. John Renaud, Jr.
4110 Yoakum Street
Apt. 15
Houston, Texas 77006

Mr. George Broze
1823-A Marshall Street
Houston, Texas

National Lawyers Guild
Houston Chapter
4803 Montrose Blvd.
Suite 11
Houston, TX 77006

Edg Crane
13507 Kingsride
Houston, TX 77079



Stephen M. Sohinki
Counsel for NRC Staff