

II. The Issuance of An Amended Notice of Hearing Was Not Legally Required In This Proceeding

Proceedings in this case were instituted pursuant to a Notice of Hearing issued on December 28, 1973 (38 F.R. 35521). These proceedings resulted in a partial initial decision on certain issues. The Appeal Board, on review of the decision, noted that any aspect thereof which might be affected by intervening events, e.g. new information, would be subject to re-examination. Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Units 1 and 2), ALAB-301, 2 NRC 853, 855 (Dec. 1975).

In light of the reactivation of the Allens Creek construction permit application by the Applicant, the Board issued an Order on March 23, 1978, in this proceeding requesting the views of the parties on the question of whether an amended notice of hearing was required. Both the Applicant ^{*/} and the NRC Staff ^{**/} filed responses to the Order, to the effect that an amended notice of hearing was not legally required. Applicant will not repeat the entire substance of those filings; however, the following brief summary thereof may be helpful. ^{***/}

^{*/} Applicant's Response to the Licensing Board's Order of March 23, 1978, dated April 14, 1978.

^{**/} NRC Staff's Response to the Licensing Board's Order of March 23, 1978, dated April 10, 1978.

^{***/} Applicant hereby incorporates by reference its April 14, 1978 Response to the Board's March 23, 1978 Order.

Applicant noted that pursuant to the provisions of § 189a of the Atomic Energy Act and 10 CFR § 2.104 of the Commission's regulations, a notice of hearing was published in the Federal Register in this proceeding on December 28, 1973, which notice provided for a hearing on all of the issues required for the issuance of a construction permit and that such notice satisfied the requirements of both the Atomic Energy Act and the Commission's regulations.

Applicant noted further that the licensing action for Allens Creek was never terminated by the Applicant, but was merely held in abeyance in 1975 while the project was reassessed. The licensing process was resumed by the Applicant by letter to the NRC Staff, dated October 7, 1976. Neither the Act nor the Commission's regulations require the issuance of any further notice of hearing in these circumstances.

The NRC Staff also took the position that there was no legal requirement for an additional notice of hearing. The Staff further stated that it believed that with respect to changed circumstances, "neither the project's nearly two year deferral nor its reduction in size from two units to one effects any changes in the project significant enough, from either environmental or safety standpoints, to require renoticing of the Allens Creek proceeding." However, the Staff pointed out that should the Board decide to exercise its discretion and issue an amended notice of hearing, such a notice allowing intervention should be limited to those issues "specifically related either to the reduction in the scope of the facility from two units to one, or to the deferral of the dates for the construction and operation of the facility."

III. The Board Properly Restricted the Filing of Contentions Under the Notice and Corrected Notice of Intervention Procedures

TexPirg now argues (some two and a half months after the Board's August 14 Memorandum and Order) that the Board should remove the restrictions on the filing of contentions because the doctrines of res judicata and collateral estoppel should not be applied to TexPirg in this case.

TexPirg misconceives the nature of the Commission's licensing process and the purport of the Board's Notice and Corrected Notice of Intervention Procedures. The Board's action does not reflect application of the doctrines of collateral estoppel or res judicata. It simply recognizes, as anticipated by the Appeal Board, that events intervening since the date of the partial initial decision might require re-examination of matters determined in that decision. Stated another way, the Board's action anticipated the possibility of the filing of petitions based on "new information" or "changes in design"--filings which might otherwise have been treated as untimely and rejected as being unsupported by any showing of "good cause."

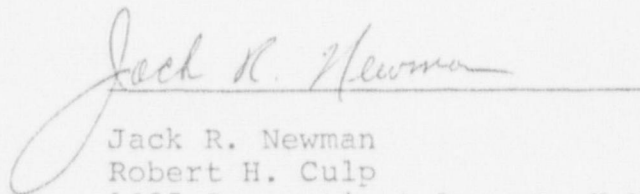
The Commission's original notice of hearing published on December 28, 1973 in this proceeding provided the opportunity for all persons whose interest might be affected by the construction and operation of the proposed plant to file petitions to intervene and to raise issues with respect to both environmental and health and safety aspects of the plant. TexPirg, as well as other members of the public, had the opportunity, within the time frame specified in the Notice, to file such petitions.

In essence, TexPirg now argues that it should be allowed to relitigate issues which were or could have been raised and litigated in response to the original notice of hearing. TexPirg (and other petitioners in this proceeding) are not precluded from advancing contentions unrelated to design changes or to new evidence or new information by application of the doctrines of res judicata or collateral estoppel, but rather because they sat on the rights accorded them by the original notice of hearing and the Commission's regulations.

It is neither a legal requirement under the Atomic Energy Act or the Commission's regulations, nor sound administrative practice to provide more than one opportunity to litigate any given issue. The motion should be denied.

Respectfully submitted,

November 13, 1978



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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Response to Tex-Pirg's Motion for Modification of the Licensing Board's August 14, 1978 and September 1, 1978 Orders Re: Limitations on Contentions, were served on the following by deposit in the United States Mail, postage prepaid, or by hand delivery this 13th day of November 1978:

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