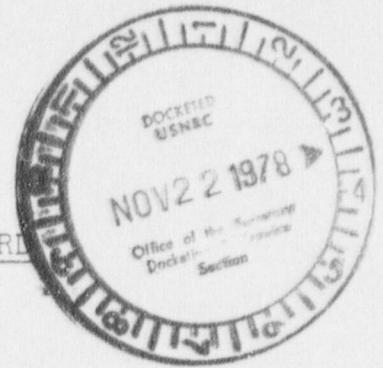


NRC PUBLIC DOCUMENT ROOM

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

APPLICANT'S RESPONSE TO PETITION
FOR LEAVE TO INTERVENE BY THE
HOUSTON GULF COAST BUILDING AND
CONSTRUCTION TRADE COUNCIL (HGCBTC)

I. Introduction

On November 10, 1978, a petition for leave to intervene in this proceeding was filed by the Houston Gulf Coast Building and Construction Trade Council (HGCBTC or petitioner) supporting the construction and operation of ACNGS. The petition was filed approximately one month after the expiration of the intervention period set forth in the Board's Corrected Notice of Intervention Procedures (43 F.R. 40328). However, the petition was filed only eight days after the November 2, 1978, deadline set forth in the Board's October 24, 1978, Order for the filing of contentions.

Petitioner's members consist of 37 individual unions representing approximately 30,000 members who reside and/or work in the Applicant's service area. Petitioner shows that its members' health and safety and the quality of

7812050046

6

their environment is dependent upon the power to be produced from the proposed ACNGS. Petitioner further asserts that the reduction in the number of units at the ACNGS has heightened the interest of its members in assuring the timely availability of energy from ACNGS.

For the reasons discussed below, Applicant supports the petition and urges the Board to admit HGCBTC as a party to this proceeding.

II. Petitioner's Interest

Applicant believes that Petitioner has demonstrated interest (standing) and has shown how that interest may be affected by this proceeding in accordance with 10 CFR 2.714. Petitioner's members work and/or reside in Applicant's service area and, obviously, have a significant interest in assuring an adequate electric supply, which interest will clearly be adversely affected if ACNGS's construction permit is denied. Moreover, the sheer number of individuals who are represented by petitioner (approximately 30,000) indicates that the injury in fact sustained in such circumstances will be of enormous magnitude.

III. Timeliness

The petition is, obviously, untimely, but the nature of the petitioner, the petition and the circumstances of its filing, together provide compelling good cause.

It is the nature of a petition in support of an application, that the requirement and necessity for its filing may not be understood until the affected petitioner is given notice of the issues being raised by others in opposition to the application. Those issues were identified only preliminarily by the filings of October 11, and not with finality until the November 2 filings by opponents of the plant, pursuant to the Board's Order of October 24, 1978.

Upon the filing of the petitions on October 11 and the contentions on November 2, it was clear that (1) issues of great importance to the petitioner (the efficacy of conservation as an alternative to new generating capacity; the substitution of cooling towers for the cooling lake) would likely be matters in controversy; (2) a large number of petitioners purporting to represent the "public interest" might be admitted as parties and; (3) at least one petitioner (National Lawyers Guild) purported to represent certain HGCBTC members.^{*/}

Thus, relatively late developments compelled the filing by HGCBTC. As noted by petitioner, HGCBTC is a very large

^{*/} Although the National Lawyers Guild indicated at the special prehearing conference (Tr. 620, 632) that it was not now claiming to represent any other person or individuals other than the Guild itself, nevertheless, petitioner no doubt continues to believe that its members' interests should be recognized and protected in this proceeding.

organization and actions in its name require the approval of its 37 member unions, an apparently formidable task.

Considered against this background, the fact that there is good cause for the untimely filing seems self-evident. Guidance by the Appeal Board on the treatment of petitions similarly situated suggests that some allowance must be made for an untimely filing in these circumstances. See In the Matter of Nuclear Engineering Company, Inc. (Sheffield Waste Disposal Site) ALAB-473, 7 NRC 737, 743 fn. 5. In addition to a demonstration of "good cause" by petitioner for failure to file on time, the Applicant is of the view that on a balancing of the factors set forth in 10 CFR § 2.714(a) the petition should be granted.

A. Availability of other means whereby petitioner's interest will be protected. It would appear that in view of petitioner's "unique" perspective, there are no other means available to protect its interests. Petitioner could provide, from the perspective of the average working person, evidence as to the need for the power from ACNGS as it relates to jobs, the economic well being of the community, and environmental amenities. As to the latter, none of the other petitioning parties purport to represent the interests of the community in having the recreational facility afforded by the cooling lake. The Applicant may attest to its value, but the need for the lake can be most dramatically presented from the standpoint of perhaps one of the largest identifiable public interest groups in Applicant's service area, HGCBTC.

B. The extent to which petitioner's participation may reasonably be expected to assist in developing a sound record. Applicant believes that petitioner can make a valuable contribution to this proceeding in at least the following ways: (1) petitioner can provide a special insight into the need for power from the standpoint of job opportunities in the area to be served by the plant; (2) petitioner can contribute to a subject which may be among the most important to be dealt with in this proceeding; i.e. the need for the recreational lake associated with ACNGS; and (3) petitioner is in a unique position to provide information on the socio-economic effects of ACNGS construction and operation. Accordingly, petitioner's participation on these subjects should reasonably be expected to assist the Board in developing a sound record.

C. The extent to which petitioner's interest will be represented by existing parties. Petitioner possesses a special perspective on the issues in this proceeding. Although Applicant shares petitioner's interest in the timely construction and operation of ACNGS, only the petitioner can present evidence from the standpoint of the average working person and to conduct the cross-examination to defend that interest. This is particularly essential here because of the number of organizations who have filed petitions to intervene purporting to represent the "public interest." Failure to admit petitioner would possibly jeopardize the

objectivity of the Board's record, particularly on key environmental issues (e.g., need for power; recreational lake; socio-economic effects of construction and operation of ACNGS.).

D. The extent to which the petitioner's participation will broaden the issues or delay the proceeding. Petitioner has expressly disclaimed any intent to broaden the issues or to delay the proceeding. The issues which have been raised by petitioner--need for power, value of the recreational lake and related socio-economic considerations--are all within the scope of this proceeding and most are raised in petitions which have been filed by others. Moreover, petitioner has already stated that it will not present evidence which is cumulative or repetitious and has indicated that it is fully prepared to comply with such schedules as have been, or will be, established by the Board. Petition, pp. 4, 5.

Petitioner's Contentions

The Appeal Board has stated that a petitioner who files a petition for leave to intervene in support of the proposed plant need not file contentions until it is clear what the issues in the proceeding will be. Nuclear Engineering Co., supra, 7 NRC 737, 743, fn.5. Nevertheless, petitioner HGCBTC has raised issues in its petition which it seeks to

have placed in issue in this proceeding. It would appear that all four issues are related to changes in the design of the ACNGS as required by the Board's Corrected Notice.

Contentions 1 and 4 relate to the need for power to be produced from the proposed facility and the effect on petitioner if that need is not met. While not specifically stated in the petition, the reduction from two to one unit at ACNGS obviously heightens concern as to the need for the facility. Contention 2 is addressed to the issue of whether there is any environmentally preferable alternative to ACNGS and Contention 3 relates to the issue of the cooling lake as a valuable recreational facility. Both contentions 2 and 3 are related to reduction in the number of units at ACNGS and to the reduction in the size of the cooling lake and accordingly, should be admitted.

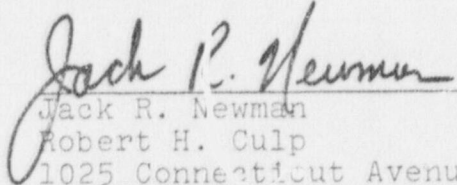
IV. Conclusion

Since petitioner represents probably the largest identifiable "public interest" group among all the groups and individuals who have filed petitions for leave to intervene, Applicant urges the Board, for the reasons discussed above, to admit petitioner as a party to this proceeding. Furthermore, if the Board should decide not to admit petitioner as a matter of right, Applicant supports the petitioner's request

that it be allowed to intervene as a matter of the Board's discretion. Applicant believes that petitioner will make a truly valuable contribution to the record of this proceeding.

Respectfully submitted,

November 22, 1978


Jack R. Newman
Robert H. Culp
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

J. Gregory Copeland
Charles G. Thrash, Jr.
3000 One Shell Plaza
Houston, Texas 77002

Attorneys for Applicant
HOUSTON LIGHTING & POWER COMPANY

OF COUNSEL:

LOWENSTEIN, NEWMAN, REIS,
AXELRAD & TOLL
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

BAKER & BOTTS
3000 One Shell Plaza
Houston, Texas 77002

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))
_____)

CERTIFICATE OF SERVICE

I hereby certify that copies of Applicant's Response to Petition for Leave to Intervene by the Houston Gulf Coast Building and Construction Trade Council (HGCBTC) were served on the following by deposit in the United States Mail, postage prepaid, or by hand delivery this 22nd day of November, 1978:

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

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

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

Chase R. Stephens
Docketing and Service Section
Office of the Secretary of the
Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Richard Lowerre, Esq.
Assistant 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

Gregory J. Kainer
11118 Wickwood
Houston, Texas 77024

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

R. Gordon Gooch, Esq.
Baker and Botts
1701 Pennsylvania Avenue, NW
Washington, DC 20006

Steve Sohinki, Esq.
Staff Counsel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

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

James Scott, Jr., Esq.
8302 Albacore
Houston, Texas 77074

Carro Hinderstein
8739 Link Terrace
Houston, Texas 77025

Jean-Claude De Bremaecker
2128 Addison
Houston, Texas 77030

Edgar Crane
13507 Kingsride
Houston, Texas 77079

Patricia L. Day
2432 Nottingham
Houston, Texas 77005

Lois H. Anderson
3626 Broadmead
Houston, Texas 77025

David Marke
Solar Dynamics, Ltd.
3904 Warehouse Row
Suite C
Austin, Texas 78704

Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, DC 20555

T. Paul Robbins
C/O AFSC
600 West 28th Street, #102
Austin, Texas 78705

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

Brenda A. McCorkle
6140 Darnell
Houston, Texas 77074

Emanuel Baskir
5711 Warm Springs Road
Houston, Texas 77035

Steven Gilbert, Esq.
122 Bluebonnet
Sugar Land, Texas 77478

Brent Miller
4811 Tamarisk Lane
Bellaire, Texas 77401

John V. Anderson
3626 Broadmead
Houston, Texas 77025

John R. Shreffler
5014 Braeburn
Bellaire, Texas 77401

Robert S. Framson
4822 Waynesboro Drive
Houston, Texas 77035

Madeline Bass Framson
4822 Waynesboro Drive
Houston, Texas 77035

Shirley Caldwell
14051 Lillja
Houston, Texas 77060

Ann Wharton
1424 Kipling
Houston, Texas 77006

Joe Yelderman, MD
Box 303
Needville, Texas 77461

D. Michael McCaughan
3131 Timmons Lane
Apartment 254
Houston, Texas 77027

Lee Loe
1844 Kipling
Houston, Texas 77098

Alan Vomacka, Esq.
Houston Chapter, National
Lawyers Guild
4803 Montrose Blvd.
Suite 11
Houston, Texas 77006

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

Joe Archer, Esq.
Combs, Archer & Peterson
1220 Americana Building
811 Dallas Street
Houston, Texas 77002

Mrs. R. M. Bevis
7706 Brykerwoods
Houston, Texas 770055

Kathryn Hooker
1424 Kipling
Houston, Texas 77006

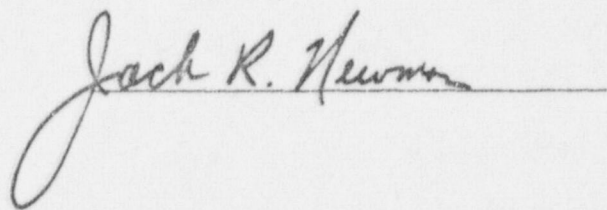
John Renauld, Jr.
4110 Yoakum Street
Apartment 15
Houston, Texas 77006

Allen D. Clark
5602 Rutherglenn
Houston, Texas 77096

D. Marrack
420 Mulberry Lane
Bellaire, Texas 77401

George Broze
1823-A Marshall Street
Houston, Texas 77098

Charles Michulka, Esq.
P. O. Box 882
Stafford, Texas 77477

A handwritten signature in cursive script, reading "Jack R. Newman", followed by a horizontal line.