

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)

HOUSTON LIGHTING AND POWER)
COMPANY)

(Allens Creek Nuclear Generating)
Station, Unit 1))

Docket No. 50-466

MEMORANDUM AND ORDER

On October 27, 1978, a petitioner for leave to intervene, Texas Public Interest Research Group (PIRG), filed a Motion For Modification Of The Licensing Board's August 14, 1978 and September 1, 1978 Orders - Re: Limitations On Contentions. On November 13 and November 16, 1978 respectively the NRC Staff and the Applicant filed Responses opposing the granting of the instant Motion.

MEMORANDUM

A. Background

On December 28, 1973, there was published at 38 Federal Register 35521 a Notice Of Hearing On Application For Construction Permits. Therein notice was given that a hearing would be held by an Atomic Safety and Licensing Board to consider the application filed under the Atomic Energy Act of 1954, as amended, by the Houston Lighting and Power Company for construction permits for two boiling water reactors designated as the Allens Creek Nuclear Generating Station (ACNGS), Units 1 and 2.

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Said Notice provided in pertinent part:

A petition for leave to intervene must be filed with the Secretary of the Commission and others as specified below by January 28, 1974. A petition for leave to intervene which is not timely will not be granted unless the Board determines that the petitioner has made a substantial showing of good cause for failure to file on time and after the Board has considered those factors specified in 10 C.F.R. § 2.714(a) (1)-(4) and § 2.714(d). (Emphasis added).

The only petition for leave to intervene was filed by the State of Texas and, by Order of January 27, 1975, Texas was admitted as a party. A hearing was held on the application by the Board on March 11 and 12, 1975.^{1/} After proposed findings had been filed, by motion served on September 26, 1975, Applicant notified that its construction plans were indefinitely deferred. Notwithstanding, on November 11, 1975, the Board issued a Partial Initial Decision As To Some Environmental And Site Suitability Matters and concluded that its findings "have demonstrated no reason why the ACNGS site is not a suitable location for

1/ On March 11, 1975, Texas filed a motion withdrawing its Contentions T-4 because additional information supplied by the Staff and the Applicant and an opinion of the U.S. Geological Survey supported the view that the proposed site was geologically suitable.

nuclear power reactors of the general size and type proposed . . .". (LBP-75-66, 2 NRC 776).

In a Memorandum and Order issued on December 9, 1975, the Appeal Board affirmed the Partial Initial Decision, but noted that the findings already made therein would be "subject to later revision should further developments or new information so warrant (ALAB-301, 2 NRC 853).

On August 19, 1977, Applicant advised the Board that it wished to resume licensing of only one of the two units previously planned and that it had amended its Preliminary Safety Analysis Report to show only one unit at the same site.^{2/}

Subsequently, on May 31, 1978, a Notice of Intervention Procedures was published at 43 Federal Register 23,666. Thcrein, among other things, the Board stated that petitions for leave to intervene with respect to matters that have arisen because of the changes in the proposed plans for ACNGS might be filed on or before June 30, 1978. In a Memorandum and Order dated July 31, 1978, the Board directed that, by August 15, 1978, those persons (including PIRG), who had evidenced intentions to intervene, must file statements to establish legal standing and statements listing their contentions. The Board further directed that the

^{2/} These amendments included changes in plant layout and orientation, changes in the circulating water intake and discharge structures, and a reduction in the size of the cooling lake.

"scope and thrust of these contentions shall be limited to those changes or amendments identified in the Applicant's letter of August 19, 1977".

After discussing in a conference call the statements made by five petitioners for leave to intervene (including PIRG) that the Board's Memorandum and Order of July 31, 1978 was too restrictive with respect to the scope and thrust of contentions that could be proposed, we issued an Order dated August 14, 1978^{3/} rescinding the July 31st Memorandum and Order. Therein, the Board (1) expanded the scope and thrust of proposed contentions (which had been limited to those matters that have arisen because of changes in the proposed plans for ACNGS) to include 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, and (2) directed that, by no later than August 30, 1978, the five petitioners for leave to intervene could submit a statement listing their contentions. On August 29, 1978, PIRG submitted a statement of contentions supplementing its petition for leave to intervene.

Our corrected Notice of Intervention Procedures dated September 1, 1978 and published at 43 Fed. Reg. 40328 (September 11, 1978), noted that the wording of the Board's original Notice had been too limited and

^{3/} In a separate Order dated August 14, 1978, we granted Applicant's motion to withdraw the application to construct and operate Unit 2, without prejudice to the refiling of the application at a later time.

accordingly directed that petitions for leave to intervene with respect to matters that have arisen because of the changes in the proposed plans for ACNGS and with respect to new evidence or information that had not been available prior to December 9, 1975 could be filed on or before October 11, 1978.

Thereafter, numerous petitions for leave to intervene were filed. Our Order of October 24, 1978, directed (1) that a § 2.751a special prehearing conference would be held on November 17 and 18, 1978, (2) that by no later than November 2, 1978, any person who had filed a petition for leave to intervene pursuant to our Corrected Notice of Intervention Procedures should file a supplement to his petition listing contentions, and (3) that those, who had filed petitions for leave to intervene pursuant to our original Notice and who had complied with our Order of August 14, 1978, could amend previously filed contentions by no later than November 2, 1978. Under date of November 1, 1978, PIRG filed additional contentions.

During the course of the special prehearing conference held on November 17 and 18, 1978, PIRG's interest and contentions, as well as those of other petitioners, were discussed.

B. The Motion For Modification Is Denied.

In the instant Motion, upon its own behalf and apparently upon the

behalf of other petitioners whom it does not represent, PIRG requests that we modify our Orders of August 14 and September 1, 1978 to eliminate the two restrictions upon the admissibility of contentions raised by petitioners. PIRG argues that the premises of the orders, namely res judicata or collateral estoppel, have been incorrectly applied since the current petitioners were not parties to the hearings of March 11 and 12, 1975.

PIRG erroneously infers that the bases for our Order of August 14, 1978 and for our Corrected Notice of Intervention Procedures of September 1, 1978 were res judicata or collateral estoppel. These doctrines were not considered at all. The Board was well aware that none of the five initial or subsequent petitioners had complied with the mandatory filing date specified in the Commission's Notice Of Hearing On Application For Construction Permits published on December 28, 1973 - i.e., none had filed petitions for leave to intervene by January 18, 1974.^{4/} We have always viewed the current proceedings as being a resumption and continuation of the previous proceedings which, in effect, had been suspended since the issuance of the Appeal Board's Memorandum and Order of December 9, 1975, and, absent the filing of motions for leave to file untimely petitions for leave to intervene

^{4/} While, as noted previously, the State of Texas had been admitted as a party on January 27, 1975, it withdrew its contentions on March 11, 1975 which related only to the geological suitability of the proposed site.

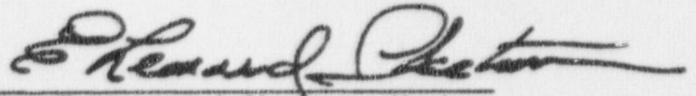
pursuant to 10 C.F.R. § 2.714, the Board could have proceeded to hear the evidence adduced by the Applicant and Staff and rendered its decision upon health and safety and upon environmental issues. However, recognizing that there had been design changes and that new evidence might have become available since December 9, 1975, and in light of the guidance provided by limitations in the Appeal Board's Memorandum and Order, the Board determined that the scope and thrust of any proposed contentions, which would dispute any findings in the Partial Initial Decision or would raise issues that were neither raised before this Board nor decided in our Partial Initial Decision, should be limited to those matters that had arisen because of the changes in the proposed ACNGS plans and to new evidence or information that had not been available prior to December 9, 1975. Having slept upon its rights either in not having timely intervened in this case prior to January 18, 1974 or in not having moved for leave to file an untimely petition for leave to intervene which, inter alia, would have had to have shown good cause for failure to file on time, PIRG (and indeed the other petitioners) cannot be heard to urge that permission should be granted to propose unbounded contentions.

ORDER

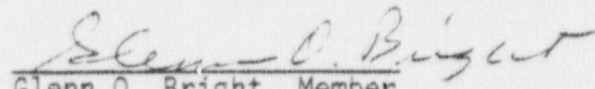
PIRG's Motion For Modification Of The Licensing Board's August 14, 1978 and September 1, 1978 Orders - Re: Limitations On Contentions is denied.

IT IS SO ORDERED.

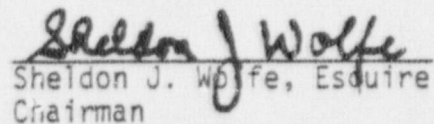
THE ATOMIC SAFETY AND
LICENSING BOARD



Dr. E. Leonard Cheatum, Member



Glenn O. Bright, Member



Sheldon J. Wolfe, Esquire
Chairman

Dated at Bethesda, Maryland
this 30th day of November, 1978.