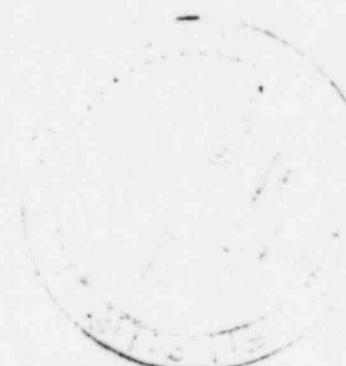


NRC PUBLIC DOCUMENTS ROOM  
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

10/04/79

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) )



NRC STAFF'S RESPONSE TO SUPPLEMENT TO  
PETITION TO INTERVENE AND LIST OF CONTENTIONS OF GLEN VAN SLYKE

On September 13, 1979, Mr. Van Slyke filed a timely supplement to his prior petition for leave to intervene in the captioned proceeding in which he (1) moves that the Board allow timely contentions to be filed by all petitioners until September 30, 1979 as Mr. Van Slyke alleges is required by 10 CFR §2.714(b); (2) provides additional information regarding the petitioner's standing in this proceeding; and (3) sets forth three contentions which the petitioner seeks to have admitted as issues in controversy in this proceeding. The Staff will deal with each aspect of Mr. Van Slyke's filing below.

The Motion

This Board, by order of August 6, 1979, established September 14, 1979 as the deadline for the filing of contentions in this proceeding by all petitioners for leave to intervene. As a result of that order, Mr. Van Slyke and all other petitioners have been provided five weeks from the date of the order, and almost three months from the date of this Board's "Supplemental Notice of Intervention Procedures," dated June 18, 1979 (44 Fed. Reg. 35062), in which to frame

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contentions. While it is true that 10 CFR §2.714 permits contentions to be filed up to fifteen days prior to the first prehearing conference, 10 CFR §2.711(a) confers authority on this Board to alter the time periods in the rules for good cause.<sup>1/</sup> Given the large number of petitioners in this case, and the considerable time necessary on the parts of the Staff and Applicant to adequately address the contentions of those petitioners, the August 6 Order of this Board is eminently reasonable. Mr. Van Slyke's motion should be denied.

Standing

As this Board has noted, in Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976), the Commission stated that, to have standing, a petitioner had to allege both an injury which had occurred or would probably occur as a result of the proposed action, and an interest that is "arguably within the zone of interests" protected by the statute. In the supplement to his petition for leave to intervene, Mr. Van Slyke makes clear that his interest in this proceeding is chiefly as a vehicle for complaining about alleged harassment and political spying and for determining whether there will be threats posed to his civil liberties by issuance of the proposed construction permit. As this Board stated in denying the petition for leave to intervene filed previously in this proceeding by the National Lawyer's Guild:

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<sup>1/</sup> See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-564, \_\_\_ NRC \_\_\_, Docket No. 50-466 (September 19, 1979), Slip op. at 8, fn. 4.

Obviously petitioner is in the wrong forum--civil liberties do not come within the "zone of interests" to be protected or regulated by the Atomic Energy Act and the National Environmental Policy Act, which are enforced in our licensing proceedings. 2/

Therefore, the Staff believes that Mr. Van Slyke has not established the requisite standing in this proceeding.

Contentions 3/

1. The petitioner contends that the Applicant may overreact to peaceful protests and treat them in a "violent and unjustified" manner. In addition, the petitioner appears to be complaining about alleged ambiguities in the definition of industrial sabotage contained in 10 CFR §73.55(a)(1). The contention should be rejected for two reasons. First it is totally speculative with regard to its allegations of perceived possible responses to peaceful protest. Secondly, to the extent that petitioner believes there are ambiguities in the regulations, the proper forum to resolve those is not in an individual licensing proceeding but by way of a petition for rulemaking pursuant to 10 CFR §2.802.
2. This contention is similar to the first in that it complains about the potential for illegal harassment by the Applicant's security personnel

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2/ "Order Ruling Upon Intervention Petitions," dated February 9, 1979, pp. 64-65.

3/ The Staff notes that the petitioner's contentions all relate to aspects of a detailed security plan which will not be submitted until the operating license stage of review. They are, therefore, premature at best.

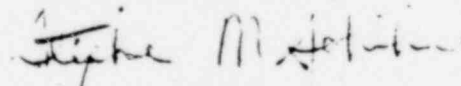
and attacks alleged ambiguities in 10 CFR Part 73, App. B. The contention should be rejected for the same two reasons discussed above in opposition to contention 1.

3. In this contention, the petitioner complains about the failure of the Applicant to specify the details of its "Safeguards Contingency Plan" required pursuant to 10 CFR Part 73, Appendix C. However petitioner fails to recognize that the specific provisions of that plan are not required to be submitted until the operating license stage of review. See 10 CFR §50.34(d).

#### Conclusion

For all the above reasons, the Staff believes that Mr. Van Slyke has established neither standing to participate in this proceeding nor at least one litigable contention as required by 10 CFR §2.714. Therefore, we believe that his petition should be denied.<sup>4/</sup>

Respectfully submitted,



Stephen M. Sohinki  
Counsel for NRC Staff

Dated at Bethesda, Maryland this  
4th day of October, 1979

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<sup>4/</sup> Since Mr. Van Slyke's only interest in this case is to raise matters which are not cognizable before this Board, the Staff does not believe that "discretionary intervention" is appropriate in this case. See Pebble Springs, supra.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO SUPPLEMENT TO PETITION TO INTERVENE AND LIST OF CONTENTIONS OF GLEN VAN SLYKE" 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 4th day of October, 1979:

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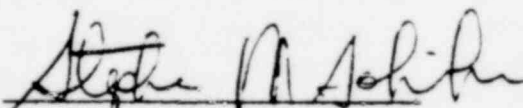
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