

(Signed)

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety & Licensing Board

In the matter of )  
Allen's Creek Unit 1 )  
(Houston Lighting and Power Co.) )

Docket # 50-466

MOTION TO COMPEL RESPONSES BY THE APPLICANT  
Re: TexPIRG's Third Interrogatories to HLSP

I.

The Texas Public Interest Research Group (TexPIRG), an intervenor in the above-styled proceeding, submitted a third set of interrogatories to the Applicant, Houston Lighting and Power Company, and is in receipt of responses dated Aug. 28, 1979.

TexPIRG requests that the Board compel the Applicant to respond more fully to the interrogatories as named herein. In particular, TexPIRG asks that the Board compel the response to certain interrogatories in which the Applicant has raised objections. All of the items to be presented in this document result from the said third set of interrogatories.

II.

The Applicant should be ordered to answer more fully the following requests for information, as noted in this section:

(A.) INTERROGATORY NO. 5:

What is the need for power basis of constructing both ADVES and two lignite units in Limestone County?

A: Applicant objects to this interrogatory on the grounds that the question is vague. The term "need for power" basis" is not defined, is out of context and is without relevance to any admitted contention in this proceeding.

TexPIRG cannot seriously believe Applicant's statement that HLSP does not understand what is sought in the interrogatory. First of all, the question should be examined in the context of the line of questioning prior to #5.

Interrogatories #1 through #4 have inquired as to why HLSP has not included 1,500 MWe of power in the system capacity analyses of its Environmental Report Supplements (as reported by the Final Supplement to the Final Environmental Statement), and TexPIRG believes this line of inquiry is very important in examining the "need for power" analyses, since HLSP admits it is planning such capacity addition not included in those analyses.

Applicant avers that the term "need for power" is vague and undefined. Yet in

the context of licensing power plants and preparation of certain environmental reports this term should be clear. For instance, Section s.8 of the Final Supplement to the Final Environmental Statement for Allen's Creek Nuclear Generating Station is entitled "NEED FOR POWER GENERATING CAPACITY." The interrogatories 1-4 leading up to this question are clearly linked together in that each refers to the same lignite facility as mentioned in the interrogatory, and several of those interrogatories refer by citation to Section s.8.

Turning to the question of whether this interrogatory has relevance to this proceeding, TexPIRG finds no reason to think otherwise. In fact, showing a "need for power" is one of the most important responsibilities of the Licensing Board in meeting NEPA obligations. At page 1-1 of Regulatory Guide 4.2 (rev. 2), "Preparation of Environmental Reports for Nuclear Power Stations," applicants are shown the manner in which they should establish the need for power in their system, including "...portray(ing) the relationship of the proposed generating facility to the applicant's system and related systems..."(id.). As Applicant's responses to TexPIRG's third set of interrogatories show, Applicant in this case has apparently not included all of the proposed capacity additions in its environmental reports, and these facts underscore the importance of this interrogatory asking the Applicant, essentially, to justify the need for both Allen's Creek and the new lignite project.

TexPIRG's contention in controversy regarding use of conservation is relevant to the issue of need for installed capacity. Initially, one must know how much power is actually needed in the system before one establishes the amount of conservation required to obviate the need for a new plant. TexPIRG would, in fact, argue that conservation, as described in contention #7, includes the whole issue of need for power by the Applicant's system. Licensing Boards have generally treated conservation conventions as an issue of systemic need for electrical power, and Section 1.1 of Reg. Guide 4.2 (rev. 2), in fact, requires Applicant to consider conservation within the context of the overall showing of a need for the power production.

#### (B.) INTERROGATORY #6

Q. Why wasn't Limestone County considered as an alternative site for ACNGS? (Include an explanation of the reason such a site is ~~considered~~ considered for construction of another power plant in the Applicant's grid, if the site is not suitable for ACNGS.)

A. The basis for alternative candidate site selection is presented in Chapter 9 of the ACNGS Environmental Report-Construction Permit Stage.

The mere referral to Chapter 9 of the E.R. is vague and not responsive to the interrogatory. TexPIRG is familiar with all of the alternative site studies Applicant has produced during discovery, and this question was indeed a result of curiosity

as to why what the Applicant proposes to be the largest power plant in its system is not being built on one of optimal sites analyzed in its voluminous and expensive studies.

Even if one were to assume that the scant answer provided does provide the basis for not considering Limestone County, then clearly Applicant has not responded to the second part of the question: "Include an explanation of the reasons such a site is considered for construction of another power plant in the Applicant's grid, if the site is not suitable for ACNGS."

(c.) INTERROGATORY #7:

Q. During the 66th session of the Texas Legislature (Spring, 1979), what was the position, if any, taken by lobbyists registered on behalf of HL&P, with regard to H.B. 1501/S.B. 794 (Omnibus Solar Energy Act) and H.B. 1935/S.B. 304 (Solid Waste Energy Act)? What were the names of the lobbyists advocating those positions on behalf of HL&P?

A. Applicant objects to this interrogatory on the grounds that it is not relevant to an admitted contention. Applicant's position on any legislation is not an issue in this proceeding and has absolutely no relevance to the factual merits of the accepted contentions.

One of the bills mentioned in this question proposed to provide incentives for solar installations, and the other proposed to eliminate obstacles to the use of refuse-to-energy facilities. TexPIRG's contention #7 refers to the use of passive solar facilities in the Applicant's service area and is relevant to the former bill, while TexPIRG's proposal for a refuse-to-energy alternative energy production facility is relevant to the latter bill.

The requested information may lead to admissible evidence, especially if Intervenor is forced to rebut any potential allegations by Applicant that HL&P has, in good faith, and with objectivity, made <sup>efforts</sup> studied one of these alternatives.

(D.) INTERROGATORY # 8:

Q. Does HL&P have any written correspondence with an industrial energy consortium called CAM? In what officer's custody is that correspondence? State where TexPIRG may inspect or copy that information.

A. Applicant objects to this interrogatory on the grounds that it is overly broad and burdensome. Applicant's correspondence ranges over multiple issues and is dispersed in a number of files in various departments. Without some reasonable limitation on the scope and purpose of the inquiry, Applicant respectfully declines to oblige.

TexPIRG's only knowledge of the consortium CAM is that the organization is apparently studying self-generation and/or co-generation by industries in the Applicant's electrical sales area, and thus directly pertains to Contention #7 sub-part on industrial self-generation. If Applicant is aware of other "multiple issues" involving this consortium, then Applicant could well have limited its disclosure of information to issues litigable in this proceeding, i.e., self-generation of power.

Regardless, Applicant has failed to name the officer(s) in whose custody that information lies, as requested. Providing that information would at least have provided a minimal amount of information necessary to frame a more specific interrogatory in the future. Applicant complains that Intervenor has not been specific enough in requesting its correspondence, yet does not provide any information to enable Intervenor to frame a more specific request. Nor has Applicant provided persuasive evidence that fulfilling the request is burdensome, and assuming that it is burdensome, Applicant has suggested no manner in which Intervenor may gain the information in a less burdensome manner.

Intervenor has very little means to pursue its contention with regard to self-generation of industrial power without this minimal co-operation of the Applicant. Obviously, TexPIRG would face greater difficulty in attempting to subpoena a non-party such as CAM; therefore, the appropriate means of gaining such information is through discovery with parties who do have access to such information.

Applicant should be ordered to produce all the correspondence requested in this interrogatory which relates to co-generation or self-generation of electrical power by the CAM convention.

(2.) INTERROGATORY # 9:

Q.: For what reasons did H&AP commence a proposed joint electrical generation venture with Dow Chemical Company? Does H&AP have any correspondence on this matter, and how may TexPIRG inspect that information?

A: Applicant objects to this interrogatory on the grounds that it is not relevant to any admitted contention. Applicant's negotiations with Dow Chemical Company were not concerned with self-generation or co-generation techniques. Since this project has no relevance to the self-generation issue in TexPIRG Contention 7 nor upon any other issue in an admitted contention, the subject matter is not within the scope of permissible discovery; the request further relates to matters which are confidential.

In response to Interrogatory #8, Applicant stated that the Dow venture was the predecessor of the Limestone Lignite facility discussed in interrogatories 1-3. This question is necessary in order to learn more about the evolution and Applicant's perception of need for that power plant; therefore, this question is relevant to Contention 7 in the same manner and on the same line of reasoning as expressed in II(a) of this document (see response to interrogatory #5).

Furthermore, information from this interrogatory may plausibly relate to a more accurate prediction of whether Dow Chemical--one of H&AP largest customers--may be likely to make a future conversion to self-generation. As with CAM, TexPIRG may have great difficulty instituting discovery procedures on a non-party such as Dow, and must rely upon information available to parties to this proceeding.

Finally, TexPIRG believes that the Board, TexPIRG, and H&AP should be able to work out an arrangement around Applicant's confidentiality problems if the Applicant would provide more information on the nature and scope of the problem.

(f.) INTERROGATORY # 10:

Q. What was the projected impact of the venture mentioned in #9 above (at the time it was proposed) upon H&P's total demand, installed capacity, and reserve margin?

A. See response to Interrogatory No. 9.

As stated previously, the issue of actual need for power, as represented by demand vs. installed capacity, is crucial to the contention of conservation. Thus, the arguments stated above for II(A.) here also apply for this interrogatory. Moreover, since the Applicant has stated previously in responses that Limestone Power Plant was not included in FS-FES tables on projected capacity and that further the Dow venture was the precedent plant, TexPIRG needs this information to determine what really is included in Table S.8.14 of the FS-FES. In responding to Interrogatory No. 2, Applicant stated that the Limestone facility must have been left out because it was not planned yet. Since the Dow project is alleged to be the earlier Lignite proposal, this information is needed to determine if it should have been counted instead. TexPIRG would also note that the objections of burdensomeness and confidentiality raised in response to Interrogatory #9 would appear to be less applicable to Interrogatory # 10.

(G.) INTERROGATORY #11:

- C. In calculating increased electrical demand within the service area, list by company name and location the industrial users which are expected to comprise 15 % or more of the increased industrial demand during the period of the calculation. State the percentage of total increased electrical demand each of these industrial users is expected to be responsible for.
- A. Applicant objects to this interrogatory on the grounds that it is vague, and Applicant cannot determine whether the question relates to individual companies or customer groups. The interrogatory is also objectionable in that it is without reference to a specific time.

TexPIRG does not think the question is vague, but rather is very specific in its request. The question obviously seeks the names of individual companies, rather than customer groups, since it states "...list by company name and location...". (The request is limited only to those companies expected to comprise no less than 15 % of projected industrial demand increases in order to avoid a burdensome request.) With regard to time period, TexPIRG requests that it be for the period of calculation, which obviously refers to demand calculations conducted for this licensing, since Applicant must know that the interrogatories relate to N.R.C. licensing. Inferentially, from examining S.8.2.1 of the Enl. Supp.-FES for ACRS, TexPIRG is aware that H&P has individual company data for the first five years of the calculation, at least. A responsive answer to the interrogatory would indicate increased demand for each of the relevant companies in the form sought by the interrogatory for as many years as it is known in

(H) INTERROGATORY # 12:

Q. With respect to the transportation of the reactor vessel, state the location and mode of placing the reactor vessel onto the barge that will enter the San Bernard River. By what means will the reactor vessel be transported to this loading location? Will the loaded barge enter the mouth of the San Bernard River?

A. The reactor pressure vessel will be fabricated at the Chicago Bridge and Iron Nuclear facility, located on the Mississippi River in Memphis, Tennessee. The vessel will be loaded onto the barge at the CBIN facility and will be ultimately transported up the San Ben Bernard River to the off-loading point.

The Applicant has not responded to the interrogatory. Specifically, the Applicant has not stated whether the loaded barge will enter the mouth of the San Bernard River. Intervenor has not been able to find out, to this point in the hearings process, whether the barge will enter the San Bernard River from the Gulf or via the intercoastal canal. If Applicant does not know, Applicant should so state.

(I.) INTERROGATORY # 13:

Q. Has HL&P received any communication, oral or written, from the NRC staff indicating that the Applicant should obtain a certificate of necessity and convenience from the Public Utility Commission prior to proceeding with construction permit application processes? If so, what was the date of that communication?

A. Applicant objects to this interrogatory on the grounds that the certificate of necessity and convenience for AGENS issued by the Public Utility Commission of Texas is not an issue relevant to any admitted contentions in this proceeding.

The Public Utility Regulatory Act of Texas provides for a determination process through facility certification, in which the need for a particular plant, among other factors, is determined. An indication whether staff of the NRC showed concern as to another agency's evaluation of need for the plant may lead to admissible and relevant evidence on the issue of whether the plant is needed in the Applicant's system.

(J.) INTERROGATORY # 15:

"Q. List and describe any documents, reports, or internal memoranda on the advisability or feasibility of continuing the lifetime or extended use of natural gas plants through application of exemptions for areas with deteriorated air quality conditions in the Power Plant and Industrial Fuel Use Act of 1978."

"A. See answer to 16A."

In Interrogatory #16, TexPIRG inquired as to whether HL&P plans to utilize the exemptions mentioned in #15. TexPIRG believes that the response to #16 is acceptable, but that the response does not answer #15.

The response of "16A," as referred to by the Applicant above is:

Applicant is not able to answer this question because the Economic Regulatory Agency has not issued final regulations under the Industrial Fuel Use Act of 1978. The Applicant will continue to evaluate proposed

(7.)

and final regulations as they are issued, and will seek any exemptions permitted by the regulations if such exemption is determined to be in the best interest of its customers and stockholders.

This response does not state whether any of the documents requested in #15 exist, and does not list and describe the documents. The use of the words "will continue to evaluate" (proposed and final regulations) implies that in fact some documents do exist. TexPIRG seeks an answer responsive to Interrogatory #15.

(K.) INTERROGATORY # 21:

Q. At 9.2.1.3.4 of the Environmental Report, H&P states that a coastal site near the Gulf of Mexico is too costly in order to deal with three factors mentioned in that sub-part. Provide the relevant cost estimates which provide a basis for that statement, the source of those estimates, and the proximate date on which the cost estimates were calculated.

A. AGNS ER Section 9.2.1.3.4 states "A coastal site using sea water for cooling purposes is considered to be a viable alternative by H&P. However, the disadvantages of such a site include:"

(a) Costs of providing adequate protection against flooding and hurricanes.  
(b) Additional cost of mitigation of environmental impacts related to:

1. Diffuser
2. Intake Pipes.
3. Dredging
4. Siltation
5. Ecological Monitoring

Although the Applicant is not certain as to which three factors interrelated in requesting additional information, the cost estimates presented in Section 9.2.1.3.4 were prepared by Hazas Services, Inc. in mid-1978.

TexPIRG's copy of the Environmental Report (vol. 2) uses the identical first sentence cited by Applicant's response; However, <sup>the ER</sup> the section reads:

"However, the combined cost of (1) protecting the ecology from environmental damage during site preparation and plant operation, (2) providing adequate protection against flooding during hurricanes, (3) and developing and maintaining a cooling system capable of using saline waters, make a coastal site less desirable than a site within the Brazos River Basin." ER, AGNS, p. 9.2-5

TexPIRG does not know where Applicant's citation comes from; perhaps it is a supplemental document, and apparently part of the cited language is an indirect quotation. Regardless, TexPIRG's copy of the ER clearly states three factors. And Applicant has not made any attempt to provide cost estimates for disadvantages of a Gulf site, as requested in the interrogatory.

(I.) INTERROGATORY NO. 25:

Q. Was underground siting considered as an alternative plant design? If not, why not?

A. Applicant objects to this interrogatory on the grounds that TexPIRG's Acting Executive Director John F. Doherty represented to Applicant's counsel in his deposition under oath that TexPIRG had dropped the underground siting portion of its Contention 6. Deposition of John F. Doherty, at 129, March 26, 1979. Hence, this interrogatory is not relevant to any persisting contention.

TexPIRG is not aware of withdrawing this contention. The Applicant has raised the "Doherty Representation" argument in other instruments in this proceedings in trying to state that TexPIRG has withdrawn contentions. TexPIRG has stated prior to this time that Mr. Doherty was not authorized to withdraw contentions during his deposition, and will not re-hash that issue.\*/ When and if TexPIRG decides to withdraw contentions, TexPIRG will do so in the normal fashion--by filing amended pleadings with the Board. Moreover, Applicant's reliance upon Mr. Doherty's alleged statement on this contention does not hold up under a review of the facts. In A MOTION TO COMPEL FURTHER ANSWERS, dated June 24, 1979 (almost three months after the alleged Deposed statement), Applicant continued to request information on the basis for Contention Six's allegation of burying the plant to protect against airplane crashes. (id., p.19-20) And at page 31 of that document, Applicant, in part, stated: "...Applicant has confined its request to those of the second set of interrogatories it considers essential." Thus, Applicant does not give any indication that it believed the circumstances made it unnecessary to prepare a case on this issue.

\*/ Applicant seems intent on utilizing these supposed withdrawals by Mr. Doherty as a "tool" against TexPIRG for whatever purpose it sees fit. During an August pre-hearing conference before the Public Utility Commission on a rate issue, HLEP raised this issue in an unusual attempt to deny TexPIRG standing, only to be told by the Hearing Examiner that...



(9.)

III.

To the extent that Applicant has raised questions within its responses regarding the scope of TexPIRG inquiry, TexPIRG would point out to the Board the guidance of Rule 33 of the Federal Rules of Civil Procedure. Interrogatories need not request admissible evidence, but rather must be reasonably calculated to lead to the discovery of admissible evidence. All of TexPIRG's interrogatories meet that standard.

IV.

WHEREFORE PREMISES CONSIDERED, TexPIRG prays that the honorable Board order the Applicant to fully respond to Requests Nos. 5, 6, 7, 9, 8, 10, 11, 12, 13, 14, 21, 25, by overruling invalid objections and requiring more responsive answers where necessary.

Respectfully Submitted,

*James M. Scott, Jr.*  
James Morgan Scott, Jr.  
Counsel for TexPIRG

X  
CERTIFICATE OF  
SERVICE

I, James Scott, Jr., herein certify that this Motion for Compelling Certain Responses has been served by deposit in the US Mail on or before Sept. 5, 1979 upon the following: Sheldon Wolfe, B.L. Cheatum, Gustave Linenberger, Jack Newman, J.G. Copeland, Richard Lowrey, Steve Gohilski, J. Doherty, Carro Hinderstein, Brenda McCorkle, and W. Kentfro.

COUNTY OF HARRIS  
STATE OF TEXAS

*James M. Scott, Jr.*