

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of )  
 )  
Philadelphia Electric Company ) Docket Nos. 50-352  
 ) 50-353  
(Limerick Generating Station, )  
Units 1 and 2) )

APPLICANT'S ANSWER TO LIMERICK ECOLOGY  
ACTION PETITION TO INTERVENE

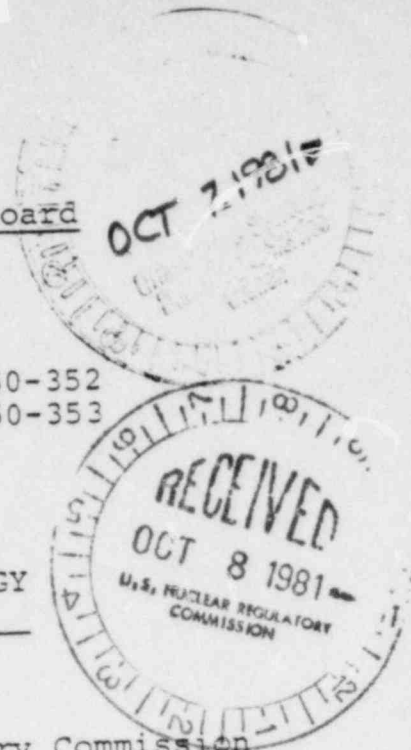
Preliminary Statement

On August 21, 1981, the Nuclear Regulatory Commission  
("Commission" or "NRC") published notice in the Federal  
Register entitled "Philadelphia Electric Co. (Limerick  
Generating Station, Units 1 and 2), Receipt of Application  
for Facility Operating Licenses; Consideration of Issuance  
of Facility Operating Licenses; Availability of Applicant's  
Environmental Report; and Opportunity for Hearing" ("Notice"). <sup>1/</sup>

In response to the Notice, a petition for intervention  
was filed by Limerick Ecology Action ("LEA") on September  
18, 1981. <sup>2/</sup> The affidavits of four members of LEA were  
attached in support of the petition.

<sup>1/</sup> 46 Fed. Reg. 42557 (August 21, 1981).

<sup>2/</sup> LEA is represented by co-counsel, who presumably were  
authorized by LEA's Executive Board to file and serve  
the petition for intervention on its behalf. In addi-  
tion, however, Phyllis Zitzer, president of LEA, states  
in her affidavit that she has been "designated by the  
Executive Board of Limerick Ecology Action as the organi-  
zation's duly authorized member representative to partici-  
pate in the operating license proceedings before the NRC  
for Limerick Units 1 and 2." Under the Commission's Rules  
of Practice, an unincorporated association such as LEA "may  
be represented by a duly authorized member or officer, or



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For the reasons discussed more fully below, petitioner LEA has failed to satisfy the requirements for organizational standing in an NRC proceeding. Nor has petitioner identified the "specific aspect or aspects of the subject matter of the proceeding" which it wishes to pursue. Accordingly, the petition should be denied.

Argument

Under the Commission's Rules of Practice, a petition to intervene in a licensing proceeding may be granted only if the requirements of 10 C.F.R. §§2.714(a)(2) and (d) have been satisfied. In essence, the regulations require the petitioner to state his specific interest in the proceeding and explain how that interest may be affected by the outcome of the proceeding.

It is now well settled that "organizations . . . are not clothed with independent standing to intervene in NRC licensing proceedings. Rather, any standing which [an organization] may possess is wholly derivative in character." Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390 (1979).<sup>3/</sup> In other words, an organizational petitioner must establish

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2/ (continued)

by an attorney-at-law." 10 C.F.R. §2.713(b) (emphasis added). In these circumstances, it is assumed that the designated co-counsel will act as the sole representatives and spokesmen for LEA in all aspects of this proceeding.

3/ See also Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728 (1979); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73 (1979).

that at least one of its members has legal standing to intervene in this proceeding under the rules applicable to individual petitioners.

In response to the petition of Marvin I. Lewis to intervene in this proceeding, Applicant has stated its position as to the necessary particularization of an individual petitioner's identifiable interest in a licensing proceeding, including an explanation of how that interest would be affected by any given outcome in the proceeding. This position is equally applicable to the generalized statements of petitioner's members herein. Rather than furnish the Licensing Board with repetitive pleadings, Applicant hereby incorporates and respectfully refers the Board to its answer to the Lewis petition for a statement of the additional authorities upon which it relies in opposing the instant petition.<sup>4/</sup>

Although the four members of LEA who have furnished affidavits live within 4 - 11 miles of the Limerick facility, their stated interests in intervening are insufficient to confer standing on LEA. For example, the statement by Phyllis Zitzer that she is "concerned about the safe operation of the Limerick reactors" is a classic example of a nonparticularized interest which is shared in roughly the same measure by a large portion of the general public.

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<sup>4/</sup> Petitioner has been served with a copy of Applicant's answer to the Lewis petition.

Further, her assertion that she "will be directly affected by their operation" is entirely conclusionary and fails to "show a distinct and palpable harm"<sup>5/</sup> to affiant herself. Nothing in her affidavit establishes how she "will or might be injured in fact by one or more of the possible outcomes of the proceeding," but merely shows an intent "to vindicate broad public interests said to be of particular concern to [her]."<sup>6/</sup>

The same is true of the other affidavits, which contain equally vague statements that the affiants are concerned that the Limerick reactors "will adversely affect the health, well-being and economic prosperity of ourselves and our children."<sup>7/</sup> Contrary to the requirements of 10 C.F.R. §§2.714(a)(2) and (d), these affidavits entirely fail to "set forth with particularity the interest of the petitioner in the proceeding" and "how that interest may be affected by the results of the proceeding," including further specification of the "nature and extent" of the affiant's interest in the proceeding.

Indeed, one of the affidavits specifies an interest which is clearly beyond the jurisdiction of this Licensing Board to consider, i.e., the adequacy of insurance against a

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<sup>5/</sup> Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977).

<sup>6/</sup> Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 740-41 (1978).

<sup>7/</sup> LEA petition, affidavit of Susan and Philip Nester.

nuclear accident.<sup>8/</sup> Whether construed as an attack upon the validity of the Price-Anderson Act<sup>9/</sup> or an unauthorized challenge to the Commission's regulations under 10 C.F.R. Part 140,<sup>10/</sup> the adequacy of insurance against a possible nuclear accident may not be litigated in this proceeding. See Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 323 (1979).

Another affiant states "concerns about the evacuation plans for [the Pottstown Memorial Medical Center], in the event of an accident at Limerick that would require us to evacuate and relocate our patients."<sup>11/</sup> As an employee, not an owner or other duly authorized representative, of the hospital, the affiant (and therefore LEA) lacks standing to represent the hospital's proprietary interests. Similarly, the affiant lacks standing to represent the personal health and safety interests of the hospital's patients. It is well established that, in the absence of a fiduciary, trustee or other special relationship recognized under the law, there is no right to litigate the interests of third parties in

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<sup>8/</sup> LEA petition, affidavit of Nancy Catton.

<sup>9/</sup> 42 U.S.C. §2210.

<sup>10/</sup> Absent express authorization to the contrary, the Commission's adjudicatory boards lack authority to hear challenges to the Commission's regulations in licensing proceedings. See, e.g., Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63, 67 n.3 (1978).

<sup>11/</sup> LEA petition, affidavit of David Spontak.

adjudicatory proceedings. As the Court stated in Warth v. Seldin, 422 U.S. 490, 499 (1975), a party "generally must assert his own legal rights and interests, and cannot base his claim to relief on the legal rights or interests of third parties." Again, in Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 166 (1972), the Court stated that a party "has standing to seek redress for injuries done to him, but may not seek redress for injuries done to others."<sup>12/</sup>

The other interests expressed in the body of the petition are likewise inadequate. LEA's mere exhibition of a "special interest" in the protection of natural resources<sup>13/</sup> is not a basis for intervention because the Supreme Court "has held that an organization's mere interest in a problem, 'no matter how long-standing the interest and no matter how qualified the organization is in evaluating the problem,' is not sufficient for standing to obtain judicial review."<sup>14/</sup> Further, the interests of LEA's membership as ratepayers are outside the "zone of interests" protected under the Atomic

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<sup>12/</sup> In the Transnuclear proceeding, supra, 6 NRC at 531, the Commission adopted the Warth test for standing. See also Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252 (1977); Singleton v. Wulff, 428 U.S. 106 (1976); Broadrick v. Oklahoma, 413 U.S. 601 (1973); United States v. Raines, 362 U.S. 17 (1960).

<sup>13/</sup> LEA petition at 1.

<sup>14/</sup> Westinghouse Electrical Corp. (Export to South Korea), CLI-80-30, 12 NRC 253, 258 (1980), citing Sierra Club v. Morton, 405 U.S. 727, 739 (1972).

Energy Act of 1954.<sup>15/</sup> Similarly, "decreases in property values during normal operations over the life of the plant" are excluded from matters which licensing boards may consider.<sup>16/</sup> These alleged adverse consequences are so "speculative"<sup>17/</sup> that they cannot satisfy the injury in fact requirements for standing. Such drastic and conjectural changes as petitioner postulates simply need not be considered.<sup>18/</sup>

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- <sup>15/</sup> Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-21, 4 NRC 610, 614 (1976); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 243 n.8 (1980); Public Service Company of Oklahoma (Black Fox, Units 1 and 2), LBP-77-17, 5 NRC 657, 659 (1977), aff'd, ALAB-397, 5 NRC 1143, 1147 (1977); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289 (Restart), "Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conference" (September 21, 1979) (slip opinion at 7).
- <sup>16/</sup> See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), CLI-80-39, 12 NRC 607 (1980) (2-2 vote). In reconsidering this order, the Commissioners voted to adhere to its previous determination "to exclude psychological stress and community deterioration contentions." Id., CLI-81-20 (September 17, 1981) (slip opinion).
- <sup>17/</sup> See Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 43 (1976); Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 262 (1977); Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973).
- <sup>18/</sup> In any event, this economic interest is premised upon a widespread economic downturn within the entire area and, as such, is indistinguishable from those interests shared in substantially equal measure by all or a large class of the public. Petitioner has therefore failed to "show a distinct and palpable harm" to himself. Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977).

Further, LEA has failed to comply with the requirement that it designate "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene."<sup>19/</sup> The aspects designated by petitioner merely outline general areas of subject matters which may be cognizable in NRC proceedings. Specific aspects of these areas, however, have not been provided. Just as a proper designation of "aspects" should be "narrower than a general reference to [the NRC's] operating statutes,"<sup>20/</sup> a general reference to the topical headings of the Commission's regulations, more or less taking a "table of contents" approach, is clearly insufficient.

Moreover, petitioner purports to reserve the right to file contentions beyond the scope of its own designated aspects. Petitioner has not shown that any such right inheres under the express requirements of 10 C.F.R. §2.714. To permit the unlimited development of contentions beyond those aspects designated by petitioner itself would render the regulation meaningless. Obviously, the Commission intended that the Board, Staff, Applicant and other parties be given notice at the outset as to the extent of the proposed intervention. Also, given the standing requirements discussed above, all aspects alleged by petitioner, including any contentions thereunder, must necessarily be limited to the demonstrated "injury in fact," if any.

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<sup>19/</sup> 10 C.F.R. §2.714(a)(2) (emphasis added).

<sup>20/</sup> Consumers Power Company (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978).



As a final matter, petitioner's request to consider "aspects" regarding the availability of water supplies related to Limerick may not be heard because this matter lies within the plenary jurisdiction of the Delaware River Basin Commission, see generally Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163 (1975), which has granted final approval to the supplemental cooling water plans for Limerick.<sup>21/</sup> This action of the DRBC was approved by the United States District Court for the Eastern District of Pennsylvania on August 17, 1981. Moreover, this matter was fully "ventilated and resolved at the construction permit stage" and petitioner has not made "any supported assertion of changed circumstances or the possible existence of some special public interest factors in the particular case." Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-74-12, 7 AEC 203 (1974).

#### Conclusion

For the reasons more fully discussed above, petitioner has failed to satisfy the requirements for intervention by an organization purporting to represent the personal interests

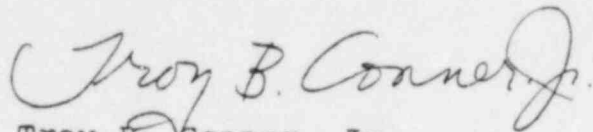
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<sup>21/</sup> It may be noted that permits related to the Point Pleasant project itself, specifically for the Point Pleasant intake structure and for the Chalfont waste treatment plant, are now pending before the United States Corps of Engineers.

of its members and has also failed to designate those aspects in which it has such an interest. Accordingly, the petition to intervene should be denied. Applicant has no objection, however, to a limited appearance by petitioner under 10 C.F.R. §2.715(a).

Respectfully submitted,

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October 5, 1981

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NUCLEAR REGULATORY COMMISSION

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PHILADELPHIA ELECTRIC COMPANY ) Docket Nos. 50-352  
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Limerick Ecology Action Petition to Intervene," in the captioned matter have been served upon the following by deposit in the United States mail this 5th day of October, 1981. A copy of Applicant's answer to the Marvin I. Lewis petition has also been served on petitioner.

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Judge Peter A. Morris  
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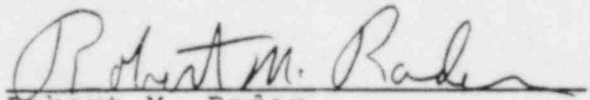
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