

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) )

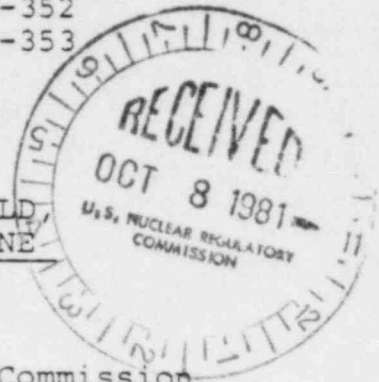
APPLICANT'S ANSWER TO NATIONAL LAWYERS GUILD,  
PHILADELPHIA CHAPTER, PETITION TO INTERVENE

Preliminary Statement

On August 21, 1981, the Nuclear Regulatory Commission ("Commission" or "NRC") published a 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 the National Lawyers Guild, Philadelphia Chapter ("Guild"), on September 18, 1981.

For the reasons discussed more fully below, petitioner National Lawyers Guild has failed to satisfy the requirements for organizational standing in an NRC proceeding. Nor has petitioner designated the "specific aspect or aspects of

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



DS03  
3  
1/1

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 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>2/</sup> In other words, an organizational petitioner must establish that at least one of its members has legal standing to intervene in this proceeding under the rules applicable to individual petitioners.

In essence, the instant petition to intervene suffers from the same defects which resulted in denial of another chapter of the Guild's petition for intervention by the

---

<sup>2/</sup> 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).

Appeal Board in the Allens Creek proceeding. The factual parallel between the two cases is striking. The petition here, as in Allens Creek, does not identify by name or address any particular member whose interest might be affected by the outcome of the proceeding and who has expressly authorized the Guild to represent those interests in this proceeding. Instead, there is simply a representation by counsel that certain unspecified members of the Philadelphia Chapter of the Guild "reside in and around Philadelphia."<sup>3/</sup>

Further, while the Guild states an abstract concern over "security measures and the rights of prisoners,"<sup>4/</sup> the petition is utterly devoid of any information as to how Guild members possess any personal interest in these matters or how such interest would be affected by the outcome of the proceeding. Thus, the Guild's alleged "commitment to civil liberties and prisoners' rights"<sup>5/</sup> shows no injury in fact to its members or how such injury would result from the issuance of an operating license for the Limerick plant.

In rejecting similar assertions, the Appeal Board in Allens Creek noted that the holding in Sierra Club v. Morton, 405 U.S. 727, 739-40 (1972), precludes a finding of standing simply on the basis of an abstract concern, however genuine, with the subject matter of a proceeding. The Appeal Board

---

<sup>3/</sup> Guild petition at 1. At page 2 of the petition, it is further represented that Guild members all reside close to Limerick.

<sup>4/</sup> Id. at 1.

<sup>5/</sup> Id. at 2.

emphasized that the Licensing Board "was not merely entitled but obligated to satisfy itself that there was at least one member of the Guild with a particularized interest which might be affected by the outcome of the proceeding" and, further, that the Board was not required "to presume that the Guild had a member with the requisite affected interest on the strength of nothing more than the naked representation in its petition that a certain number of Guild members reside within 'close proximity' to the site of the proposed facility."<sup>6/</sup> The Appeal Board explained its rationale as follows:

Although it may be reasonable to suppose that most (perhaps all) Guild members share that dedication as well as subscribe to the general objectives of the organization as spelled out in the petition, it scarcely follows perforce that each considers that construction of the Allens Creek facility would invade some personal interest arguably within the zone of interests sought to be protected or regulated" by either the statutes this Commission enforces or the Constitution. Insofar as we are aware, joining and retaining membership in the Guild does not signify adherence to any particular views regarding the desirability of nuclear power facilities, either from a civil liberties standpoint or otherwise. Nor, more importantly, does there appear to be any necessary link between holding Guild membership and possessing an interest which might be affected by the construction or operation of such a facility. Indeed, for all that appears on this record, the personal

---

<sup>6/</sup> ALAB-585, 9 NRC at 391-92.

interests of any particular Guild member might be advanced, rather than harmed, by the construction of Allens Creek - i.e., the proposed licensing action would cause the member no injury in fact at all.

. . . . .

Absent disclosure of the name and address of one such member, it is not possible to verify the assertion that such members exist. In a footnote in their brief, the amici curiae endeavor to brush this consideration aside by noting that the veracity of the Guild's allegation that it has nearby members that has never been challenged and, were it to be, the Board below could require a Guild officer to submit an affidavit attesting to the truthfulness of the allegation. What this line of reasoning ignores is that both the Board and the other parties were entitled to be provided with sufficient information to enable them to determine for themselves, by independent inquiry if thought warranted, whether a basis existed for a formal challenge to the truthfulness of the assertions in the Guild's petition. Beyond that, we are unprepared to accept amici's implicit thesis that standing may be established by means of an affidavit which makes conclusory assertions not susceptible of verification by either other litigants or the adjudicatory tribunal. We know of no authority for such a novel and unattractive proposition, which to us runs counter to fundamental concepts of procedural due process. 7/

Because the Guild in Allens Creek did not satisfy this requirement, its petition to intervene was denied.

---

7/ Id. at 392-93 (footnote and citations omitted) (emphasis in original).

The same approach has been taken in a number of other licensing cases. For example, in the Enrico Fermi proceeding, the Board stated that an organization which seeks to intervene on the basis of the interest of its members "must identify specifically the name and address of at least one affected member who wishes to be represented by the organization."<sup>8/</sup> In Waterford, the Board similarly stated that institutional standing requires the representative to demonstrate that at least one of its members has satisfied the "injury in fact" and "zone of interest" tests and has at least implicitly authorized the organization to represent his interests.<sup>9/</sup> More recently, the Licensing Board in the Perry proceeding also stated the requirement that petitions for intervention "be accompanied by one or more affidavits stating the place of residence of members on whom standing is based and stating that the organization is authorized to represent the member's interests."<sup>10/</sup>

In the Big Rock Point proceeding, the Licensing Board held that intervention must be denied because the organization had failed to identify specific members by name and address, provide a statement by such members authorizing the

---

<sup>8/</sup> Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979).

<sup>9/</sup> Louisiana Power and Light Company (Waterford Steam Electrical Station, Unit 3), Docket No. 50-382, "Memorandum and Order" (March 7, 1979) (slip opinion at 4).

<sup>10/</sup> Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440 and 50-441, "Memorandum and Order Scheduling Prehearing Conference Regarding Petitions for Intervention" (April 9, 1981) (slip opinion at 6).

organization to represent it, and provide a statement of the members' interests which would be affected by the proposed action.<sup>11/</sup> And in Comanche Peak, the Licensing Board reiterated that while an organization can establish standing through its members whose interests may be affected, "the specific members must be identified, how their interest may be affected must be shown, and the member's authorization to the organization must be stated . . . ."<sup>12/</sup> Accordingly, the unsupported and conclusionary representation by the Guild's counsel that its membership possesses the requisite personal interest necessary for intervention, merely on the basis of the Guild's general "commitment" in certain areas, is insufficient as a matter of law for the Guild's intervention.

Moreover, even if an individual member had personally authorized the Guild to represent him in this proceeding and identified his own interests as those stated in the petition, those interests are clearly insufficient to establish standing. 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 identifiable interest in a licensing proceeding, including an explanation of how that interest would be affected by any

---

11/ Consumers Power Company (Big Rock Point Nuclear Plant), Docket No. 50-155, "Memorandum and Order" (September 25, 1979) (slip opinion at 4).

12/ Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728, 729 (1979).

given outcome in the proceeding. This position is equally applicable here. 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 authorities upon which it relies as to the requisite personal interest for standing.<sup>13/</sup>

Thus, petitioner's stated interest in civil rights is too nonparticularized and thus indistinguishable from the general interest of the public at large. See Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977); Nuclear Engineering Company, Inc., (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 739, 741 (1978).

Second, the Guild membership lacks standing to plead the rights of third parties. Thus, any concern over "stringent security measures" at Limerick has no bearing on the Guild membership. None of the Guild's attorneys would be an employee at Limerick affected by such measures. Nor has any personal interest of the Guild's members with regard to the State Correctional Institution at Graterford been demonstrated.<sup>14/</sup> Under the Commission's rules for intervention, which incorporate

---

<sup>13/</sup> Petitioner herein has been served a copy of Applicant's answer to the Lewis petition.

<sup>14/</sup> The Licensing Board lacks jurisdiction to consider any alleged "illegal surveillance" (Guild petition at 2). "It is settled that, in determining whether it is empowered to entertain a particular issue, a licensing board must respect the terms of the notice of hearing published by the Commission for the proceeding in question." Commonwealth Edison Company (Carroll County Site), ALAB-601, 12 NRC 18, 24 (1980).



judicial concepts of standing,<sup>15/</sup> the Guild is not authorized to represent the interests of third parties.

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 rest 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>16/</sup> Therefore, the Guild has not alleged, as it cannot, that the civil liberties or rights of its own members will be in any way affected.

Finally, petitioner has failed to designate the "specific aspect or aspects of the subject matter of the proceeding"<sup>17/</sup> in which its interest lies. The Guild has merely stated that it wishes to raise contentions in the areas of "security

---

<sup>15/</sup> As the Appeal Board stated in the Sheffield proceeding: "It is now settled that, in determining whether such an interest has been satisfactorily alleged, contemporaneous judicial concepts of standing are to be applied." Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 739 (1978). The Commission has frequently reaffirmed this standard, most recently in its approval for publication of the Final Rule proposed in SECY-81-464A (Enclosure A at p. 11) (September 24, 1981).

<sup>16/</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>17/</sup> 10 C.F.R. §2.714(a)(2).

planning and emergency planning."<sup>18/</sup> As the Board stated in the Midland proceeding, the requirements for properly designating such "aspects" are unclear but likely "narrower than a general reference to [the NRC's] operating statutes."<sup>19/</sup> The Guild's vague allusion to security and emergency planning matters is no better than just such general statutory references. It fails to give adequate notice to the Board, Staff, Applicant and other parties as to the nature of the desired intervention and the scope of proposed contentions, as was the evident intention of the Commission in its revision of 10 C.F.R. §2.714(a)(2). 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.

---

<sup>18/</sup> Guild petition at 2. It is not even clear whether petitioner is referring to personnel security or the physical security of the plant. Regardless of any effect security requirements might have upon petitioner's members or others, these requirements under the Atomic Energy Act of 1954 and NRC regulations cannot be challenged by petitioner. An attack on the constitutionality of a statute or the validity of Commission regulations has always deemed to be outside the scope of individual licensing proceedings. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63, 67 n.3 (1978); Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974).

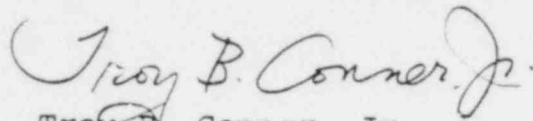
<sup>19/</sup> Consumers Power Company (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978).

Conclusion

For the reasons more fully discussed above, petitioner National Lawyers Guild has failed to satisfy the requirements for intervention by an organization purporting to represent the personal interests of its members and has also failed to designate those aspects of the proceeding in which its members have such an interest. Accordingly, the petition to intervene should be denied. Applicant has no objection, however, to a limited appearance by petitioner pursuant to 10 C.F.R. §2.715(a).

Respectfully submitted,

CONNER & WETTERHAHN



Troy B. Conner, Jr.  
Mark J. Wetterhahn  
Robert M. Rader

Suite 1050  
1747 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
202/833-3500

Counsel for the Applicant

October 5, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

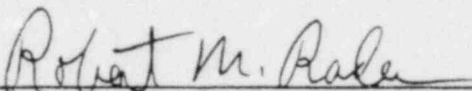
In the Matter of )  
 )  
PHILADELPHIA ELECTRIC COMPANY ) Docket Nos. 50-352  
 ) 50-353  
(Limerick Generating Station, )  
Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to National Lawyers Guild, Philadelphia Chapter, 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.

Judge Lawrence J. Brenner Chairman, Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Alan S. Rosenthal, Esq. Chairman, Atomic Safety and Licensing Appeal Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Judge Peter A. Morris Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Eugene J. Bradley, Esq. 2301 Market Street Philadelphia, Pennsylvania 19101
Judge Richard F. Cole Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Colleen P. Woodhead, Esq. Office of the Executive Legal Director U.S. Nuclear Regulatory Commission Washington, D.C. 20555
Paul B. Cotter, Jr., Esq. Chairman, Atomic Safety and Licensing Board U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Mr. Chase R. Stephens, Chief Docketing and Service Branch Office of the Secretary U.S. Nuclear Regulatory Commission Washington, D.C. 20555

Donald S. Bronstein, Esq.  
National Lawyers Guild  
1425 Walnut Street  
Third Floor  
Philadelphia, Pennsylvania 19102

  
\_\_\_\_\_  
Robert M. Rader

Counsel for the Applicant