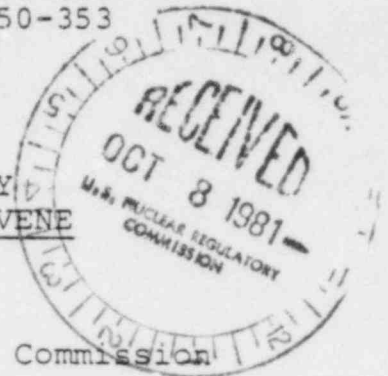


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



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 ROBERT L. ANTHONY
AND FRIENDS OF THE EARTH PETITION TO INTERVENE

Preliminary Statement

On August 21, 1981, the Nuclear Regulatory Commission ("Commission" or "NRC") published a notice on 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"). 1/

In response to the Notice, a petition for intervention was filed by Robert L. Anthony, on his own behalf and as a representative of Friends of the Earth ("FOE"), dated September 18, 1981. Attached to the petition was a letter to the NRC from Kathleen O'Leary, Chairperson, Friends of the Earth in the Delaware Valley regarding the representation of FOE in this proceeding. A list of proposed contentions was also attached.

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

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For the reasons discussed more fully below, petitioner FOE^{2/} has failed to state the requisite personal interest for intervention in an NRC proceeding. 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).^{3/} In other words, an organizational petitioner must establish that at least one of its members has legal standing to

^{2/} Inasmuch as the positions of FOE and Mr. Anthony appear to be equivalent, we assume that Mr. Anthony wishes to be designated the "sole spokesman." We shall therefore refer to FOE as the "petitioner" except when Mr. Anthony is specifically mentioned.

^{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).

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 form affidavits 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.^{4/}

FOE states that it is "a national environmental and conservation public-interest organization dedicated to the protection of U.S. citizens' laws, health and well-being," and that the Delaware Valley branch of FOE serves these goals for that region. FOE states that it is "in a unique position because of its national connections and local expertise to call upon legal, technical and other professional experts."^{5/}

On his own behalf, petitioner Anthony states that he and his wife hold jobs in Chester County which "could be

^{4/} Petitioner herein has been served a copy of Applicant's answer to the Lewis petition.

^{5/} FOE petition at 1.

drastically changed by the operation of the Limerick nuclear plants." He believes that "[f]unds from community campaigns could be cut because of increases in electric rates and the movement of families from the county; the number of young people in residential treatment from out of state could be sharply cut by fear on the part of agencies and parents to place young patients within fifteen miles of the plants.^{6/} He also states that he lives 25 miles from the Limerick facility.

The petition is accompanied by a number of affidavits using the same or nearly the same format from a number of individuals who live 4 to 25 miles from the Limerick plant. They state essentially that the affiant is a customer of the applicant and opposes issuance of licenses for the Limerick reactors because "they will adversely affect my health, well being, and economic security." Each affiant then states that he wishes to have his interests represented by Mr. Anthony as the representative of FOE.

For the reasons previously stated,^{7/} Applicant has taken the position that mere proximity to a nuclear facility, without more, is not a sufficient basis for standing in an NRC licensing proceeding under the decisions of the Commissioners and judicial precedents they have adopted as the Commission's law on standing. The form affidavits submitted

^{6/} Id.

^{7/} See Applicant's answer to the Lewis petition.

with the FOI petition vividly demonstrate the invalidity of making mere proximity to a reactor the sine qua non of standing. As noted, these affiants merely state in the most conclusory terms possible that the Limerick reactors "will adversely affect my health, well being, and economic security."^{8/} Moreover, none of these affiants even states that he or she is a member of FOE. Thus, these affidavits cannot create derivative standing for FOE.^{9/}

^{8/} Of course, certain economic interests are beyond the scope of the operating statutes of the NRC. For example, ratepapers lack standing to litigate possible increases in electric power rates. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 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).

Also, the Appeal Board has held that licensing boards "are not authorized . . . to require an applicant to accept or reject an alternative solely on the basis of its economic costs" because this is a business judgment for the applicant. Illinois Power Company (Clinton Power Station, Unit Nos. 1 and 2), ALAB-340, 4 NRC 27, 48 (1976). See also Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155 (1978); Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263 (1979); Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 456 (1980).

^{9/} See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 392-93 (1979); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC

(Footnote 9/ continued on next page)

The other interests stated by petitioner Anthony are equally generalized or otherwise invalid. Petitioner apparently believes that the licensing of Limerick would lead to a loss of psychiatric patients. However, community reaction to the operation of a nuclear facility is simply not within the "zone of interests" cognizable under the operating statutes of the NRC.^{10/} Further, the adverse consequences to petitioner's earnings are so "speculative"^{11/} that they cannot satisfy the injury in fact requirements for standing. Such drastic and conjectural changes as petitioner

9/ (continued)

73, 77 (1979); Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728, 729 (1979); 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); 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); Consumers Power Company (Big Rock Point Nuclear Plant), Docket No. 50-155, "Memorandum and Order" (September 25, 1979) (slip opinion at 4).

10/ The Commission has determined that psychological stress shall not be considered in reactor licensing proceedings. See Metropolitan Edison Company, 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 at 2).

11/ See Simon v. 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).

postulates are simply inappropriate for consideration. 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).

In short, while FOE contends that it possesses or may call upon certain legal and technical expertise, standing does not exist in the absence of a direct, personal injury to its members. In this respect, the Commission noted 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."^{12/}

Finally, the "injury in fact" requirement under the rules for intervention also bear upon the duty of a petitioner to designate "the specific aspect or aspects of the subject of the proceeding as to which petitioner wishes to intervene."^{13/} Petitioner has chosen to attach its proposed

^{12/} Westinghouse Electrical Corp. (Export to South Korea), CLI-80-30, 12 NRC 253, 258 (1980), citing Sierra Club v. Morton, 405 U.S. 727, 729 (1972).

^{13/} 10 C.F.R. §2.714(a)(2).

contentions to the petition instead.^{14/} 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.

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 plan for Limerick.^{15/} 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).

^{14/} As noted at pages 2-3 of Applicant's answer to the Lewis petition, Applicant will reply to the contentions at a later date.

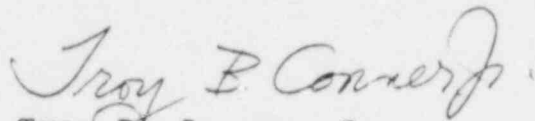
^{15/} It may be noted that permits related to the Point Pleasant project itself, specifically for the Point Pleasant intake structure and for the Chalfont waste treatment plant, are now pending before the United States Corps of Engineers.

Conclusion

For the reasons discussed more fully above, petitioner has failed to satisfy the requirements for intervention in an NRC proceeding as applied to organizations because it has failed to establish the personal interests of its members in the outcome of the proceeding. 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



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October 5, 1981

UNITED STATES OF AMERICA
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 Robert L. Anthony and Friends of the Earth 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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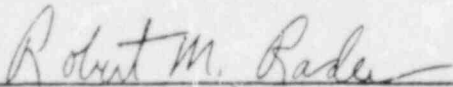
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