

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
TENNESSEE VALLEY AUTHORITY)	Docket Nos. 50-327 and 50-328
(Sequoyah Nuclear Plant, Units 1 and 2))	Docket No. 50-390
)	(Consolidated)
(Watts Bar Nuclear Plant, Unit 1))	

NRC STAFF'S ANSWER TO REQUESTS FOR HEARING
AND LEAVE TO INTERVENE FILED BY
WE THE PEOPLE, INC. TENNESSEE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission ("Staff") hereby submits its answer to the requests for hearing and petitions for leave to intervene filed by We The People, Inc. Tennessee (WTP).¹ For the reasons set forth below, the Staff concludes that WTP has demonstrated standing in connection with the consolidated license amendment proceedings described herein.²

¹Letter from A. Harris (We The People, Inc. Tennessee) to Secretary to the Commission (Jan. 14, 2002), with attachments; letter from A. Harris to Secretary to the Commission (undated), with attachments.

²As is discussed later in this Answer, there are two separate license amendment requests pending involving two separate facilities. Pursuant to an order dated January 28, 2002, issued by the Chief Administrative Judge, the two proceedings have been consolidated. The Staff has no objection to consolidation.

BACKGROUND

Tennessee Valley Authority (TVA) is the licensee for the Sequoyah Nuclear Plant, Units 1 and 2 (Sequoyah), and the Watts Bar Nuclear Plant, Unit 1 (WB). By applications dated August 20, 2001 (for WB), and September 21, 2001 (for Sequoyah), TVA requested license amendments that would allow TVA to insert up to a certain number of tritium producing burnable absorber rods (TPBARs), which contain no fissile material, into the reactor cores. The proposed amendments are related to an agreement between TVA and the U.S. Department of Energy (DOE) under which TVA will provide certain irradiation services to DOE. DOE plans to transport the irradiated TPBARs to its Savannah River site in Georgia for defense purposes, but the transportation activities by DOE are not the responsibility of TVA and are not the subject of the pending amendment requests. On December 17, 2001, the Staff published in the *Federal Register* two separate notices of the amendment requests and of an opportunity for a hearing. 66 Fed. Reg. 65,000 (2001) and 66 Fed. Reg. 65,005 (2001). Pursuant to the notices, WTP filed hearing requests and petitions for leave to intervene with respect to both facilities.

DISCUSSION

I. Legal Requirements for Intervention

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that it has standing to do so. Section 189a.(1) of the Atomic Energy Act of 1954, as amended ("Act" or "AEA"), 42 U.S.C. § 2239(a), states:

In any proceeding under this Act, for the granting, suspending, or amending of any license . . . , the Commission shall grant a hearing upon the request of *any person whose interests may be affected by the proceeding*, and shall admit any such person as a party to such proceeding."

(Emphasis added).

The Commission's regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, *inter alia*, "shall 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 the reasons why petitioner should be permitted to intervene, with particular reference to the factors set forth in [§ 2.714(d)(1)]." Pursuant to section 2.714(d)(1), in ruling on a petition for leave to intervene or a request for hearing, the Presiding Officer or Atomic Safety and Licensing Board (Board) is to consider:

- (i) The nature of the petitioner's right under the Act to be made a party to the proceeding.
- (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

Under 10 C.F.R. § 2.714(a)(2), a petition for leave to intervene must also set forth "the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene." In addition, pursuant to 10 C.F.R. § 2.714(b), a petitioner must advance at least one admissible contention in order to be permitted to intervene in a proceeding.

To determine whether a petitioner has established the requisite interest, the Commission has traditionally applied contemporaneous judicial concepts of standing. See, e.g., *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) ("Yankee Rowe").

In order to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest and that the injury is arguably within the

“zone of interests” protected by the statutes governing the proceeding. *Id.* In Commission proceedings, the injury must fall within the zone of interests sought to be protected by the AEA or the National Environmental Policy Act. *Quivira Mining Co. (Ambrosia Lake Facility)*, CLI-98-11, 48 NRC 1, 6 (1998).

To establish injury in fact, the petitioner must establish (a) that he personally has suffered or will suffer a “distinct and palpable” harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Yankee Rowe*, CLI-98-21, 48 NRC at 195, *citing Steel Co. v. Citizens for a Better Environment*, 118 S. Ct. 1003, 1016 (1998). It must be likely, rather than speculative, that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

The injury must be “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Lujan*, 504 U.S. at 560. A petitioner must have a “real stake” in the outcome of the proceeding to establish injury in fact for standing. *Houston Lighting & Power Co. (South Tex. Project, Units 1 & 2)*, LBP-79-10, 9 NRC 439, 447-48, *aff’d*, ALAB-549, 9 NRC 644 (1979). While the petitioner’s stake need not be a “substantial” one, it must be “actual,” direct” or “genuine.” LBP-79-10, 9 NRC at 448. A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requestor must allege some injury that will occur as a result of the action taken. *Puget Sound Power & Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 & 2)*, LBP-82-74, 16 NRC 981, 983 (1982), *citing Allied Gen. Nuclear Servs. (Barnwell Fuel Receiving & Storage Station)*, ALAB-328, 3 NRC 420, 422 (1976); *Puget Sound Power &*

Light Co. (Skagit/Hanford Nuclear Power Project, Units 1 & 2), LBP-82-26, 15 NRC 742, 743 (1982).

A person may obtain a hearing or intervene as of right on his own behalf but not on behalf of other persons whom he has not been authorized to represent. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329 (1989).

In order for an organization to establish standing, it must either demonstrate standing in its own right or claim standing through one or more individual members who have standing. See *Georgia Inst. Of Tech.* (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). Thus, an organization may meet the injury in fact test either (1) by showing an effect upon its organizational interests, or (2) by showing that at least one of its members would suffer injury as a result of the challenged action. *Id.* An organization seeking to intervene in its own right must demonstrate an injury in fact to its organizational interests that is within the zone of interests protected by the AEA or the National Environmental Policy Act. *Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994). Where the organization relies upon the interests of its members to confer standing upon it, the organization must show that at least one member who would possess standing in his individual capacity has authorized the organization to represent him. *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-98-13, 48 NRC 26, 31 (1998); *Georgia Inst. of Tech.*, CLI-95-12, 42 NRC at 115. The interests that an organization seeks to protect must be germane to its purpose. *Private Fuel Storage*, CLI-98-13, 48 NRC 26, 30-31.

II. WTP

A. WTP's Pleadings

WTP has submitted several documents³ from Ms. Ann Pickel Harris, including an affidavit from Mr. Phil Carroll, both stated members of WTP, for the purpose of establishing standing for WTP in regard to both of the license amendment proceedings noticed in the *Federal Register*.

With respect to the Sequoyah amendment, Mr. Carroll states that he is a member of WTP, and has authorized WTP to represent his interests. He asserts that there is enough tritium in supply for weapons, that taxpayers would pay for the tritium production involved, and that as a taxpayer he believes tax funds should be conserved. Mr. Carroll resides within 12 miles of the facility, according to his affidavit, and believes that his life, health, water supply, and property will be jeopardized and subject to "increased risk" if tritium is allowed to be manufactured at Sequoyah. He claims that he would be injured by a tritium release in the event of a "serious accident." See WTP petition, Declaration of Phil Carroll (Jan. 16, 2002), at 1-2.

In connection with the WB amendment, Ms. Harris states that she is also a member of WTP, and the organization's Director. She asserts that WTP "directs [her] to conduct this intervention on its behalf." Ms. Harris owns property and resides within 17 miles of WB. She says she believes the production of tritium at WB "will jeopardize [her] health, life, and properties," and asserts that "the increased likelihood of an accident due to the production of [tritium] would irrevocably change the value of [her] property . . . and also would make

³See *supra* note 1. Collectively, the documents, including attachments thereto, are sometimes referred to herein as the WTP petition.

[her] residence at Rockwood uninhabitable” She states that her “health could not withstand an accident at” WB. She goes on to say that the production of tritium in a commercial reactor “provides too many opportunities for terrorists attacks and further jeopardizes [her] life and those in the surrounding communities.” Finally, Ms. Harris states that an accident due to the manufacturing of tritium would lead to the inability to use water from the Tennessee River.

B. Analysis

With respect to Sequoyah, it is clear that WTP has been authorized by one of its members, Mr. Carroll, to represent his interests. Regarding WB, it is not quite as clear that Ms. Harris, in her capacity as an individual and member of WTP, and not as an official of WTP, has stated that she is authorizing WTP to represent her individual interests, but taking WTP’s petition as a whole, the Staff assumes that is her intention.⁴

The Staff believes that WTP has demonstrated injury in fact by asserting that the health and drinking water supply of its members, who live 17 miles or less⁵ from the

⁴The WTP petition as it relates to WB states that it is a hearing request “on behalf of” WTP; as mentioned earlier, the WTP petition also states that WTP is directing Ms. Harris to intervene on WTP’s behalf. It is somewhat unclear whether WTP is simply representing its members’ interests, or is attempting to represent the organization’s interests as well. Since the WTP petition focuses on Ms. Harris’s property and health, the Staff assumes that, as is the case with Sequoyah, WTP is seeking to represent the interests of one of its members in connection with WB. These interests appear to be germane to the declared purpose for WTP’s existence, i.e., seeking resolution to issues that affect public health and safety. See Letter from A. Harris to Secretary to the Commission (Jan. 14, 2002) at 1.

⁵Although the represented members of WTP live the stated distances from the facilities, in this case, presumptive standing based on geographic proximity alone has not been established. Under Commission case law, when a proposed action in a power reactor context involves a “clear” or “obvious” potential for offsite consequences and a petitioner resides within a certain distance of the facility (generally fifty miles), that petitioner is
(continued...)

facilities, will be harmed as a result of an accidental tritium release.⁶ Any such harm caused by a release would “likely” be redressed or avoided by a decision favorable to WTP.

The stated interests of Mr. Carroll and Ms. Harris appear to be within the zone of interests protected by the AEA. Also, both Mr. Carroll and Ms. Harris have identified at least one aspect of the subject matter of the proceedings (e.g., accidents relating to the production of tritium) as to which they are authorizing WTP to intervene.

⁵(...continued)

presumed to have standing. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989); *Cleveland Electric Illuminating Co., et al.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87 (1993). In a materials context, the Commission has stated that a geographic proximity presumption may apply “albeit at distances much closer than 50 miles” where there is a determination that the proposed action involves “a significant source of radioactivity producing an obvious potential for offsite consequences.” *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994). Here, WTP has certainly not made a demonstration that the proposed amendments involve an obvious potential for any significant offsite consequences, and has not demonstrated that there is an obvious potential for even insignificant offsite consequences, which, if the latter was true, presumably would undermine any notion of causation of any injuries alleged.

⁶Not all of the issues raised in the WTP petition would provide a basis for standing. For example, harm due to being a taxpayer is a “generalized grievance” that would not support standing. See *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 n.4, 333 (1983). Likewise, Ms. Harris’s assertion that the production of tritium in a commercial reactor would provide “too many opportunities for terrorists attacks” would not support standing, since it is an issue outside the scope of these proceedings.

CONCLUSION

In consideration of the foregoing, WTP has established standing. However, leave to intervene should not be granted without the proffering of at least one valid contention for each license amendment request.⁷

Respectfully submitted,

/RA/

Steven R. Hom
Counsel for NRC Staff

Dated at Rockville, Maryland
this 4th day of February 2002

⁷Although the two license amendment proceedings have been consolidated for the moment, the Staff submits that a valid contention must be proffered for each amendment application in order for that respective proceeding to continue.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO REQUESTS FOR HEARING AND LEAVE TO INTERVENE FILED BY WE THE PEOPLE, INC. TENNESSEE" in the above-captioned consolidated proceedings have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 4th day of February, 2002.

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