

February 27, 2004

Richard Cushing Donovan, Clerk
U.S. Court of Appeals for the First Circuit
John Joseph Moakley United States Courthouse
1 Courthouse Way, Suite 2500
Boston, Massachusetts 02210

RE: *Citizens Awareness Network v. USNRC*, No. 04-1145

Dear Mr. Donovan:

Enclosed are the original and three copies of "Respondents' Response to Motions to Intervene" in the case captioned above. Also enclosed are appearance forms for John F. Cordes, E. Leo Slaggie, and myself, and applications by Mr. Slaggie and me for admission to the Court of Appeals Bar.

At your convenience, please date stamp the enclosed copy of this letter to indicate date of receipt, and return the copy to me in the enclosed envelope, postage pre-paid.

Sincerely,

/RA

Steven F. Crockett
Special Counsel
Office of the General Counsel

Enclosures: As stated

cc: service list

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2004, a copy of "Respondents' Response to Motions to Intervene," was served by mail, postage prepaid, upon the following counsel:

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/RA/
Steven F. Crockett

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

CITIZENS AWARENESS NETWORK, INC.,)	
)	
Petitioner,)	
)	
v.)	No. 04-1145
)	
U.S. NUCLEAR REGULATORY COMMISSION)	
and the UNITED STATES OF AMERICA,)	
)	
Respondents.)	

RESPONDENTS' RESPONSE TO MOTIONS TO INTERVENE

On January 26, 2004, the Citizens Awareness Network (CAN) petitioned this Court for review of a new rule issued by the U.S. Nuclear Regulatory Commission (NRC) (the petition was filed under the "Hobbs Act," 28 U.S.C. 2341-2351, which provides for direct Court of Appeals review of final NRC rules). Jointly, the National Whistleblower Center (NWC) and the Committee for Safety at Plant Zion (CSPZ) have moved to intervene in the litigation. *See* 28 U.S.C. 2348. The Nuclear Energy Institute (NEI) has also moved to intervene. Respondents, the NRC and the United States, now respond to the motions.

We do not object to either motion to intervene. However, we would ask that this Court, in ruling on the motions, issue two directives, in the interest of efficient case management.

First and most important, we would ask the Court to direct petitioners and intervenors to address in their briefs the issue of standing. In the petition for review and motions to intervene, CAN, NWC, CSPZ, and NEI address to a limited extent why they think they can sue or intervene, but neither the petitioner nor the movants address fully the question of standing. It is well established that a petitioner must show Article III standing. *Save Our Heritage v. FAA*, 269 F.3d 49, 55 (1st Cir. 2000). The same applies to intervenors in litigation under the Hobbs Act. *City of Cleveland v. NRC*, 17 F.3d 1515 (D.C. Cir. 1994). In direct review actions, where there are no prior judicial proceedings, it is sensible to require litigants to set out their claims to standing in their initial Court of Appeals briefs. *See Sierra Club v. EPA*, 292 F.3d 895, 900-01 (D.C. Cir. 2002).

Second, drawing on longstanding precedent in other Circuits, we would ask that this Court limit intervenors to issues raised by the principal parties. *See AMSC Subsidiary Corp. v. FCC*, 216 F.3d 1154, 1161-62 (D.C. Cir. 2000); *see also Georgia Power Co. v. Teleport Communications Atlanta*, 346 F.3d 1047, 1049 (11th Cir. 2003), and *Seafarers International Union v. NLRB*, 895 F.2d 385, 386-387 (7th Cir. 1990). As far as we know, the First Circuit has not taken a position on this question. *See Cotter v. Massachusetts Association of Minority Law Enforcement Officers*, 219 F.3d 31, 36 (1st

Cir. 2000). But such limits will be particularly important in this case, in which, to date, with two weeks still remaining for filing petitions for review, we already have a petitioner, three would-be intervenors, the NRC, and the U.S. Moreover, two other parties have filed suit in the D.C. Circuit against the same rule, and, under 28 U.S.C 2112, that case will be transferred to the 1st Circuit.¹ Some efficient ways of handling the case will have to be found. One such way is to limit intervenors to the issues discussed in petitioners' and respondents' briefs. Of course, such a limitation would not bar the intervenors from presenting new arguments on existing issues.

¹*Public Citizen Critical Mass Energy and Environment Program, and Nuclear Information and Resource Service v. NRC*, No. 04-____ (D.C. Cir., filed Feb. 20. 2004).

