

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

Docket Nos. 50-390
50-391

(Watts Bar Nuclear Plant, Units
1 and 2)



SUMMARY

The Nuclear Regulatory Commission Staff opposes the appeal of Mrs. Jeannine W. Honicker in the above-captioned proceeding. We agree with the Atomic Safety and Licensing Board's Order of June 6, 1977, denying the petition because Mrs. Honicker lacks standing pursuant to the requirements of 10 CFR §2.714. We believe the Licensing Board was correct in finding no basis for granting intervention on a discretionary basis because Mrs. Honicker's participation would not likely produce a valuable contribution to decision making, and any order which might be entered with respect to the generalized undifferentiated interest she alleged would not result in any adverse effects to her person or property, given

Mrs. Honicker's tenuous connection to the proceeding. Order, 9-10. See generally, Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2, CLI-76/27, NRCI-76/12, 610 (December 23, 1976); Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-363, NRCI-76/12, 631 (December 30, 1976); Public Service Company of Oklahoma, Associated Electric Cooperative, Inc., and Western Farmers Electric Cooperative, Inc. (Black Fox Station, Units 1 and 2) Decision, ALAB-397, Slip Opinion, May 9, 1977.

I

BACKGROUND

The petition of Mrs. Honicker was filed on January 26, 1977, in response to a notice of opportunity to file petitions for leave to intervene published by the Nuclear Regulatory Commission ("Commission") in the Federal Register (41 F.R. 56244) on December 27, 1976. Mrs. Honicker's petition made a number of allegations purporting to state an interest and contentions pursuant to 10 CFR §2.714(a). In all, Mrs. Honicker's petition consisted of some 57 paragraphs containing many very broad, conclusory statements to the effect that she is opposed to use of commercial nuclear power to produce electricity.

The Staff filed "NRC Staff's Opposition To Petition For Leave To Intervene of Jeannine W. Honicker" on February 8, 1977. The Staff opposed the petition on grounds that Petitioners did not have standing pursuant to the requirements of 10 CFR §2.714. (The Staff did conclude, however, that the contention requirement was satisfied in that at least one adequate contention was articulated.) With regard to discretionary intervention, that Staff argued that the Commission standards set forth in Pebble Springs, supra, 616, CLI-76-27, NRCI-76/12, 610, 616 weighed against admitting Petitioner.

The Tennessee Valley Authority filed "Applicant's Answer to Petition to Intervene of Jeannine Honicker," on February 10, 1977. The Applicant stated that Petitioner had not shown an interest that may be affected by this proceeding and that Petitioner had not stated a contention meeting the requirements of 10 CFR §2.714.

By "Order Denying Petition For Leave To Intervene Of Jeannine W. Honicker," dated May 25, 1977, the Atomic Safety and Licensing Board denied the Petition to Intervene. The Licensing Board found that Mrs. Honicker did not have standing as a matter of right, did not demonstrate a basis for granting discretionary intervention, and did not state one or more viable contentions with adequate specificity and basis.

II

PETITIONER'S INTEREST

1. Petitioner has failed to state an interest that permits intervention in Commission proceedings as a matter of right.

We believe that the Licensing Board correctly found that Petitioner has no standing as a matter of right in this proceeding. Order, p. 4. We agree with its findings that (1) her status as a ratepayer and a taxpayer is a generalized grievance which is not cognizable in this proceeding, and (2) her status as a mother of a child attending the University of Tennessee is too tenuous to confer standing. Order, pp. 3-4.

The petition to intervene alleged that Petitioner is a ratepayer and a taxpayer concerned about increases in electrical power rates and in taxes that may be caused by the TVA action. This Commission has held that those generally concerned with potential increases in their costs of electrical power as ratepayers do not come within the "zone of interests" protected by the Atomic Energy Act, 42 U.S.C. 2201, et seq., or the National Environmental Policy Act, 42 U.S.C. 4331, et seq.; Pebble Springs, supra.

Similarly, Petitioner's allegations of interest as a taxpayer do not give her standing. She alleges no different interest than all other taxpayers in the State of Tennessee, and thus, the asserted interest is even more attenuated than her claim as a ratepayer. Pebble Springs, supra. As stated in Warth v. Seldin, 422 U.S. 490, 499 (1975), where an allegation of injury as a taxpayer was again held not to provide a sufficient basis for standing, "[A] 'generalized grievance' shared in substantial equal areas by all or a large class of citizens, that harm alone does not warrant exercise of jurisdiction." See also, Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 211-227 (1974); U.S. v. Richardson, 418 U.S. 166 (1974).

Petitioner also sought to predicate jurisdiction on the fact that she is the mother of a son presently living in Knoxville, Tennessee. This allegation also does not show an adequate interest to support intervention. One may not ordinarily initiate a proceeding to protect the interest of others. Warth v. Seldin, supra.

Mrs. Honicker's statements at the prehearing conference held on May 12, 1977, in Dayton, Tennessee, did not expand on her basis for intervention as a matter of right. Her arguments simply reiterated her position that in a

general sense she is opposed to the use of commercial nuclear power as a taxpayer (Tr. 62, 81), a ratepayer (Tr. 62, 81) and the mother of a son (Tr. 62, 75) who attends the University of Tennessee in Knoxville, Tennessee, which is approximately fifty (50) miles from the plant site. (Tr. 74, 118). In her oral presentation at the special prehearing conference held on May 12, 1977, in Dayton, Tennessee, and in her June 6, 1977, appeal of the Licensing Board's Order denying her petition to intervene, Mrs. Honicker merely reiterates her opposition to the Watts Bar plant. Mrs. Honicker does not give any additional enlightenment concerning actual or probable injury to her, her property, or her financial or other interests (10 CFR §2.714(d)(2)). We submit that that Licensing Board correctly held that Mrs. Honicker had not shown the interest required under §2.714.

2. Petitioner does not meet Commission requirements for permitting intervention as a matter of discretion.

We believe the Board in its May 25, 1977 Order correctly applied the criteria for discretionary intervention in denying Mrs. Honicker's petition to intervene. Order, pp. 5-6.

The Commission in Pebble Springs, supra, suggested the factors that may bear on intervention as a matter of discretion for intervenors who do

do not meet judicial standing tests include those set forth in 10 CFR §2.714(a) and §2.714(d). Generally, permission to intervene on a discretionary basis is available if a Petitioner can (1) show significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, (2) set forth these matters with suitable specificity to allow evaluation, and (3) demonstrate their importance and immediacy, justifying the time necessary to consider them. Pebble Springs, supra, p. 617. (Compare with Black Fox, supra, p. 15 and n. 14.)

Foremost among the factors which are to be taken into account in deciding whether to allow participation as a discretionary matter is consideration of whether petitioner would have a valuable contribution to make to the Commission's decisionmaking process. Pebble Springs, supra, p. 617; North Anna, supra, p. 633.

The Licensing Board reasonably concluded that those factors do not favor allowing Mrs. Honicker's intervention because she has demonstrated no significant ability to contribute to the Commission's decision-making process. (10 CFR §2.714(a)(2)). (Order, p. 6). In her petition to the Appeal Board, Petitioner described a number of general concerns about the use of commercial nuclear power, and described a number of alternative forms of energy that could be utilized in lieu of operation of the Watts

Bar facility. The alternative energy sources specified included the use of magnetohydrodynamics (MHD), the use of co-generation, the use of solar energy, the use of sludge and waste to generate methane gas which could be burned, the use of coal, the use of energy plantations (which is the use of areas to plant fast growing wood products that can be burned). With respect to the suggested energy alternatives, there is no focus on the Watts Bar facility directly to show specifically whether or how the suggested alternatives would meet TVA's need for power to be provided by Watts Bar. While the Staff, considering the more lenient standards generally applicable to the pleadings of pro se intervenors,^{1/} has taken the view that Mrs. Honicker's intervention petition marginally satisfied the contention requirement,^{2/} we surely cannot conclude that Mrs. Honicker has identified any substantial issue which is likely to have an important bearing upon the decision whether to issue an operating license for this facility. Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 2), ALAB-384, Slip Opinion, p. 10 (March 22, 1977).

^{1/} Cf. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487 (1973), (Pro se petitioners will be held to less rigid standards of pleading though a totally deficient petition will be rejected.) See generally: Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-256, 1 NRC 10, 18 at n. 9 (1975); Consolidated Edison Co. of New York, Inc., (Indian Point Station, Unit 2) ALAB-243, 8 AEC 850, 853 (1974).

^{2/} The Licensing Board, applying the standard of Cincinnati Gas and Electric Co., et al. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976), that a Board should "take the utmost care to satisfy itself fully that there is at least one contention advanced in the petition which, on its face, raises an issue already open to adjudication in the proceeding," Board found that Mrs. Honicker had not stated any adequate contention. Order, p. 9.

Moreover, Mrs. Honicker indicated at the prehearing conference that her contribution will be severely limited by lack of finances. (Tr. 72).

Unlike the circumstances in Black Fox, supra, pp. 10-11, Mrs. Honicker indicated that she would not be able to contribute by presenting an affirmative case through her own expert witnesses unless environmental groups would fund her efforts (Tr. 72; this statement is repeated in her Appeal Petition, p. 47). Mrs. Honicker indicated that she would "hope" to call certain witnesses at the proceeding (Tr. 61, 81, 125; Appeal Petition, pp. 25, 40). She mentioned Mr. Aubrey Wagner, Chairman of the TVA Board of Directors, and Mr. John Socia of the State of Tennessee Water Quality Division, among others.^{3/} However, Mrs. Honicker's Appeal Petition and her oral presentation at the prehearing conference indicate that she has no definite commitments from the witnesses she named for participation in our proceedings or for assistance to Mrs. Honicker. There is no specificity or particularization as to how the evidence of the witnesses she

^{3/} In addition, at the special prehearing conference Mrs. Honicker suggested that she would wish to call as witnesses as yet unidentified persons from the Environmental Protection Agency, the State Health Department of Tennessee, and the State of Alabama Health Department on her monitoring contention (Tr. 81). Further, Mrs. Honicker suggested that she might be able to call a Dr. Rousse from Vanderbilt (University) as a witness on the relative costs of the coal and nuclear energy sources (Tr. 125). No further specifics were given about Dr. Rousse's professional qualifications or how his assistance might aid the Licensing Board in the decisionmaking process.

hopes to present at any hearings would substantially aid in consideration of the application for the Watts Bar operating license.^{4/}

The circumstances outlined above weigh heavily against finding that Mrs. Honicker's participation "would likely produce a valuable contribution . . . to our decisionmaking process." Compare Black Fox, supra, 3-4, 9-12 with Virginia Electric & Power Company (North Anna Power Station, Units 1 and 2), ALAB-363, NRCI-76/12, 631, 633 (December 30, 1976).

Since Mrs. Honicker is the only person who has petitioned to intervene in this operating license proceeding (10 CFR §2.714(a)(3)), denial of her petition means that there will be no hearing. (10 CFR §2.714(a)(3)). However, the Nuclear Regulatory Commission Staff has a very significant review function in considering the Watts Bar operating license application. The NRC Staff must assure itself that the Applicant meets all requirements of the regulations pursuant to the Atomic Energy Act and the National Environmental Policy Act. The extensive safety evaluation report to be

^{4/} There is some indication that Mrs. Honicker envisions her primary role to be one of asking questions about the facility to be answered by witnesses called by the Licensing Board, the Staff, or the Applicant (Tr. 57, 61, 83, 85; Appeal Petition, p. 22) rather than as one of an adversary party presenting evidence (Tr. 61).

published by the Staff reviews the Applicant's application for an operating license and assures that the plant has been constructed in accordance with the construction permit issued following extensive hearings at the construction permit stage. In addition, the Staff will issue a Draft Environmental Statement and a Final Environmental Statement both of which will discuss in considerable detail the environmental effects of the Watts Bar pursuant to 10 CFR §51.21 to the extent that they were not considered at the construction permit stage. Mrs. Honicker will have an opportunity to comment on the Draft Environmental Statement, and any such comments will be fully addressed in the Final Environmental Statement.

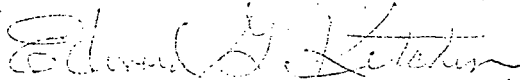
The exercise of this responsibility by the Staff provides significant opportunity for the Petitioner's concerns to be raised and addressed. Since the Commission's rules do not contain any presumption in favor of a hearing at the operating license stage, this opportunity indeed must be regarded as fully equivalent to that which would be afforded by the granting of discretionary intervention.

CONCLUSION

Petitioner has not met the interest requirements established by the Commission for admission as a matter of right. Moreover, the Licensing

Board exercised a reasonable judgment in concluding that the relevant criteria balanced against granting discretionary intervention. Most importantly, Petitioner did not demonstrate that she would make a valuable contribution to the decision-making process. Accordingly the Licensing Board Order should be affirmed.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Edward G. Ketchen".

Edward G. Ketchen
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 16th day of June, 1977

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING APPEAL BOARD

In the Matter of)

TENNESSEE VALLEY AUTHORITY)

(Watts Bar Nuclear Plant, Units
1 and 2))

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE IN OPPOSITION TO 'PETITIONER'S APPEAL FROM THE LICENSING BOARD ORDER DENYING PETITION FOR LEAVE TO INTERVENE OF JEANNINE W. HONICKER' DATED JUNE 6, 1977" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class or air mail, or, as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission internal mail system, this 16th day of June, 1977:

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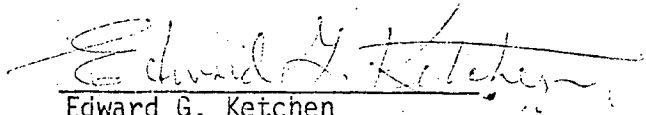
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