

Yellow

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
TENNESSEE VALLEY AUTHORITY)
(Watts Bar Nuclear Plant, Units)
1 and 2)

Docket Nos. 50-390
50-391

NRC REGULATORY STAFF'S OPPOSITION TO
PETITION FOR LEAVE TO INTERVENE
OF JEANNINE W. HONICKER

The Nuclear Regulatory Commission Staff opposes the petition of Jeannine W. Honicker to intervene in the captioned proceeding as she does not have any interest that could be affected by this proceeding within those protected by the Atomic Energy Act or the National Environmental Policy Act. This petition 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.

PETITIONER'S INTEREST

Petitioner's timely petition alleges that she is a purchaser of power from the Tennessee Valley Authority ("TVA"), a taxpayer living in Tennessee, and the mother of a student attending the University of Tennessee, at Knoxville, Tennessee.

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

To have standing as a matter of right in Commission proceedings, a petitioner must demonstrate that (1) he has some interest which will probably be affected by the action involved, and (2) that interest is within the zone of interest protected by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. and the National Environmental Policy Act, 42 U.S.C. § 4331, et seq. Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2); CLI-76-____, NRCI-76/12, Slip. Op., p. 4 (December 23, 1976); cf. Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-363, Slip. Op. (December 30, 1976).

Petitioner alleges that she 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 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., p. 6.

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. Her interests

as a taxpayer do not put her in the "zone of interest" of the relevant statutes. 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 seeks 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. Petitioner does not state she is petitioning on behalf of a minor under a legal infirmity. Because there is no showing that the son may not intervene on his own behalf, and because of the transitory nature of the son's residence in Knoxville as a student, Petitioner has not set forth a sufficient interest to predicate intervention.

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

The Commission has set out the factors that must be weighed in permitting intervention on a discretionary basis. North Anna, supra., Slip. Op., p. 7; Pebble Springs, supra., Slip. Op., pp. 9-10. Petitioner's

allegations that she is a ratepayer and taxpayer, and mother of a student attending a nearby university do not sufficiently demonstrate any significant ability to contribute to the licensing proceedings involved in consideration of the request for a license to operate the Watts Bar facility. North Anna, supra., p. 4. Petitioner has not alleged that she has a real property or financial interest to protect, other than that of a ratepayer and a taxpayer in Tennessee. The fact that the Petitioner's son attends the University of Tennessee, which is approximately 40 miles overland from the Watts Bar facility, does not demonstrate a sufficient interest to support intervention on a discretionary basis. Petitioner's interest is so tenuous that any order entered in the proceeding would not likely have a direct effect upon it.

CONTENTIONS

In addition to the interest requirements of the Commission's regulations regarding intervention found in 10 CFR § 2.714, a petition to intervene must identify at least one relevant contention with reasonable specificity and with some basis assigned for it. Mississippi Power & Light Company (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 424 (1973); Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 188, 194 (1973).

In the Staff's view, Petitioner's various allegations set forth at least one contention with sufficient specificity and supporting basis. Among

the contentions Petitioner seeks to raise are that the balance of environmental, economic, technical and other factors pursuant to NEPA does not favor operation of the facility due to inadequate consideration of:

- (a) alternatives;
- (b) proper elements in the cost of the facility;
- (c) operating costs of alternative facilities;
- (d) qualifications of the Applicant.

CONCLUSION

While Petitioner has stated at least one contention sufficient to support intervention, the Staff believes that Petitioner has not met the interest requirements established by the Commission. Nor has Petitioner shown sufficient reason to justify the granting of discretionary intervention. Accordingly, the petition should be denied.

In the event, however, that the Board should grant this petition, the Staff recommends that the sufficiency and admissibility of Petitioner's contentions not specifically dealt with in this answer be determined after further opportunity for the parties to discuss simplification, clarification and specification of issues.

Respectfully submitted,



Edward G. Ketchen
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of February, 1977.

