

July 6, 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )  
 )  
PPL BELL BEND, LLC ) Docket No. 52-039  
 )  
(Bell Bend Nuclear Power Plant) )

APPLICANT’S ANSWER TO MOTION TO FILE SUPPLEMENTAL  
STANDING DECLARATION AND REPLY TO DECLARATION

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.323(c), PPL Bell Bend, LLC, (“PPL” or “Applicant”), applicant in the above-captioned matter, hereby answers the motion for permission to file a supplemental declaration of standing (“Motion”) filed by Gene Stilp and Taxpayers and Ratepayers United (“TRU”) (collectively, “Petitioners”), dated June 26, 2009, and replies to the accompanying supplemental information (“Supplemental Declaration”).<sup>1</sup>

This proceeding relates to PPL’s application for a combined license (“COL”) to construct and operate one U.S. EPR reactor at a new site in Luzerne County, Pennsylvania — the Bell Bend Nuclear Power Plant (“Bell Bend”). The application was filed by PPL on October 10, 2008, and accepted by the Nuclear Regulatory Commission (“NRC” or the “Commission”) for docketing on December 19, 2008. 73 Fed. Reg. 79,519. Petitioners timely filed petitions to

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<sup>1</sup> See “Motion for Permission to File Supplemental Standing Declaration for Gene Stilp and Taxpayers and Ratepayers United (TRU);” “Supplemental Declaration of Standing of Gene Stilp, Pro Se, Individually, and as the Representative for Taxpayers and Ratepayers United (TRU).”

intervene on May 18, 2009. Applicant and the NRC Staff filed their respective answers on June 12, 2009.<sup>2</sup>

As discussed below, the Applicant does not oppose the Motion. However, even considering the information included in the Supplemental Declaration, Petitioners have not demonstrated that they have standing to intervene in this proceeding. Therefore, in accordance with 10 C.F.R. § 2.309, the petitions should be denied.

## II. ARGUMENT

### A. Petitioners' Motion to File Supplemental Declaration

The Applicant does not oppose the Motion to file the Supplemental Declaration. PPL recognizes that the Commission has historically been lenient in permitting *pro se* petitioners the opportunity to cure procedural defects (regarding standing) in petitions to intervene. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP-91-7, 33 NRC 179, 195 (1991) (citing *Virginia Elec. and Power Co.* (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631 (1973)).

### B. Mr. Stilp's Asserted Contacts

Recognizing that Applicant's Answer pointed out that Mr. Stilp appears to live more than fifty miles from the Bell Bend site, the Supplemental Declaration provides a lengthy summary of Mr. Stilp's past and present activities within the Wilkes-Barre area. Some of these activities are relevant to standing, others are not. For example, it is well-established that past visits to an area cannot form the basis for an injury-in-fact. *See Summers v. Earth Island Inst.*, \_\_\_ U.S. \_\_\_, 07-463, slip op. at 11 (U.S. Mar. 3, 2009). Thus, Mr. Stilp's discussion of his

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<sup>2</sup> See "Applicant's Answer to Petitions to Intervene," dated June 12, 2009 ("Applicant's Answer").

historic contacts to the area, including his time spent growing up in Wilkes-Barre, is immaterial to the Licensing Board's standing determination.<sup>3</sup> Further, Mr. Stilp cannot assert the rights of third parties (such as his extended family) as a basis for intervention. *See Detroit Edison Co.* (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 387, *aff'd*, ALAB-470, 7 NRC 473 (1978). Only Mr. Stilp's personal, present, and continuing activities are relevant to the question of his proximity for purposes of standing in this proceeding.

Even assuming Mr. Stilp has established sufficient contacts to establish a presence within 50 miles of Bell Bend, this proximity alone is insufficient to establish standing. Mr. Stilp still has not provided sufficient information to satisfy the elements required to establish standing, as discussed further below.

C. Mr. Stilp's Asserted Injuries Remain Wholly Hypothetical and Do Not Convey Standing

Although Mr. Stilp's Supplemental Declaration does provide information regarding the nature of his contacts with the area, he nevertheless fails to address the fundamental deficiency in his standing argument. As more fully explained in Applicant's Answer, in order to establish standing there must be an "injury-in-fact" that is "fairly traceable to the challenged action" and redressible in the proceeding. *Cleveland Elec. Illuminating Co.* (Perry Nuclear Power Plant, Unit1), CLI-93-21, 38 NRC 87, 92 (1993). Without an injury-in-fact or causation there can be no standing. Even with the discussion of additional contacts provided in the Supplemental Declaration, Mr. Stilp has failed to satisfy these necessary standing elements.

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<sup>3</sup> Additionally, as observed in the Applicant's Answer, Mr. Stilp's economic interests as a ratepayer do not confer standing in NRC licensing proceedings. *See, e.g., Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit 1), CLI-83-25, 18 NRC 327, 332 n.4 (1983).

Specifically, Mr. Stilp still has not demonstrated an injury-in-fact that would be caused by the construction or operation of Bell Bend. A petitioner must also establish a causal nexus between the alleged injury and the challenged action. *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 & 2), LBP-98-27, 48 NRC 271, 276 (1998), *aff'd*, CLI-99-4, 49 NRC 185 (1999). Here, the Supplemental Declaration provides a laundry list of Mr. Stilp's activities in the Wilkes-Barre area. But, it does not attempt to explain how construction and operation of the proposed plant could *cause* any harm to Mr. Stilp's person or to his proprietary interests. A bare claim that a challenged licensing action will impact the health, safety and financial interests of petitioners who reside within fifty miles of a facility does not "set forth with particularity" a statement that could grant standing.<sup>4</sup> *Commonwealth Edison Co.* (Zion Nuclear Power Station, Units 1 and 2), CLI-00-5, 51 NRC 90, 98 (2000). Simply put, an "[a]bstract injury is not enough." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983).

Likewise, there is no connection between his visits to the area — no matter their frequency — and an injury-in-fact or harm to his interests that would be caused by either the construction or operation of Bell Bend. For example, Mr. Stilp does not explain how visiting the area within fifty miles of the proposed plant could result in an injury from low-level waste storage at the plant. Nor does he describe any injury that would be caused by a failure to satisfy the financial test for decommissioning. There is no discussion of potential release mechanisms

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<sup>4</sup> Moreover, mere "concern" about the "risk" of accidental releases is insufficient injury for standing. *See, e.g., Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983); *Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-85-14, 22 NRC 177, 180 (1985).

or accident sequences that could cause personal and specific harm in the future.<sup>5</sup> Conclusory allegations about potential radiological harm from a facility in general are insufficient to establish standing. *Sequoyah Fuels Corp. & Gen. Atomics* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994). There is simply no “link” between Mr. Stilp’s activities within fifty miles of the proposed plant and any environmental or radiological safety impacts.

At bottom, although the Applicant’s Answer pointed to this very deficiency, Mr. Stilp has failed to address any causation or injury-in-fact in his Supplemental Declaration. In the absence of any concrete injury or causation, there can be no standing.

D. TRU’s Asserted Injuries are Wholly Hypothetical and Do Not Convey Standing

The Supplemental Declaration reveals, for the first time, that Mr. Stilp’s property in Wilkes-Barre serves as the northern organizing point for TRU. This does not affect Applicant’s prior arguments regarding TRU’s standing. As explained above, standing requires the demonstration of both injury-in-fact and causation, neither of which have been demonstrated by TRU at any point during this proceeding. And, neither Mr. Stilp nor TRU member Adam Helfrich have demonstrated an injury (or causation) sufficient to convey standing. Thus, the Supplemental Declaration does not establish either organizational or representational standing for TRU.

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<sup>5</sup> There must be a causal connection between the injury and the conduct complained of – that is, the injury has to be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.” *Simon Eastern K. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976). Thus, Mr. Stilp’s concerns that a terrorist attack at Bell Bend could result in radioactive releases and environmental contamination that would adversely affect Mr. Stilp’s health and safety and the value of his property cannot satisfy the “causation prong” of the standing inquiry.”

III. CONCLUSION

PPL does not object to Mr. Stilp's Motion to file a Supplemental Declaration addressing standing. However, for the above reasons above, as well as those discussed in the Applicant's Answer, the Supplemental Declaration does not establish the standing of Mr. Stilp or TRU. Accordingly, the petitions to intervene of Mr. Stilp and TRU should be denied.

Respectfully submitted,

/s/ signed electronically by \_\_\_\_\_  
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Dated at Washington, District of Columbia  
this 6th day of July 2009

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of: )  
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PPL BELL BEND, LLC ) Docket No. 52-039  
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CERTIFICATE OF SERVICE

I hereby certify that copies of “APPLICANT’S ANSWER TO MOTION TO FILE SUPPLEMENTAL STANDING DECLARATION AND REPLY TO DECLARATION” in the captioned proceeding have been served via the Electronic Information Exchange (“EIE”) this 6th day of July 2009, which to the best of my knowledge resulted in transmittal of the foregoing to those on the EIE Service List for the captioned proceeding.

/s/ signed electronically by  
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