

UNITED STATES
NUCLEAR REGULATORY COMMISSION

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COMMISSIONERS:

'99 MAR -2 P2:14

Shirley Ann Jackson, Chairman
Greta Joy Dicus
Nils J. Diaz
Edward McGaffigan, Jr.
Jeffrey S. Merrifield

AD

SERVED MAR - 2 1999

In the Matter Of)
)
COMMONWEALTH EDISON COMPANY)
)
(Zion Nuclear Power Station,)
Units 1 and 2))
_____)

Docket Nos. 50-295/304-LA

CLI-99-04

MEMORANDUM AND ORDER

I. Introduction

In this decision we review an Atomic Safety and Licensing Board Memorandum and Order, LBP-98-27, 48 NRC 271 (1998), that denied a petition for leave to intervene and request for hearing filed by Edwin D. Dienethal. Mr. Dienethal challenges particular license amendments issued to the Commonwealth Edison Company ("ComEd" or "licensee"). The Board found that he lacks standing to challenge the license amendments. Pursuant to 10 C.F.R. § 2.714a, Mr. Dienethal has appealed the Board's ruling. The licensee and the NRC staff support the Board's decision. We affirm the decision.¹

¹ Mr. Dienethal not only has challenged LBP-98-27 on appeal to the Commission, but also recently filed a petition for review (No. 99-1001) in the United States Court of Appeals for the District of Columbia Circuit challenging the same Board order. But, as we recently indicated in identical circumstances, simultaneous appeals to the Commission and to the court of appeals are impermissible. See Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 & 2), CLI-98-25, 48 NRC 325, 336 n.1 (1998). Mr. Dienethal apparently

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II. Background

This proceeding concerns a license amendment application filed by the Commonwealth Edison Company for the Zion Nuclear Power Station, Units 1 and 2. The license amendments are intended to facilitate and reflect the plant's now shutdown and defueled condition. The NRC staff issued the amendments on July 24, 1998.

Previous license amendments issued by the NRC in December of 1997 -- when neither Zion unit was in operation -- had replaced the Zion Station's Custom Technical Specifications (CTS) with a set of Improved Technical Specifications (ITS), which were to be implemented prior to resumption of operations at the Mode 4 level (hot shutdown). However, the very next month, ComEd decided to cease operations at Zion Station permanently. Consequently, both units are now shut down and nuclear fuel has been removed from both reactors. Noting "no benefit to expending the resources that would be needed to complete the ITS implementation process,"² ComEd has continued to conduct all plant activities in accordance with the CTS, and, on March 30, 1998, filed the license amendment application at issue in this proceeding.

Among the changes made by the license amendments is that of formally restoring the CTS as the specifications governing Zion Station. The amendments also reinstate 5 license conditions which are associated with the CTS and thus were deleted at the time of the ITS amendment. Besides restoring the CTS and associated license conditions, the license

¹(...continued)

misunderstands our rules. "Although petitions seeking discretionary Commission review are 'deemed denied' if not acted on in 30 days (10 C.F.R. § 2.786(c)), no comparable provision governs appeals as of right, such as [Mr. Dienethal's] (see 10 C.F.R. § 2.714a). In appeals as of right, the final agency action is a Commission decision resolving the appeal." Calvert Cliffs, Slip op. at 2 n.1. As Mr. Dienethal's appeal has been neither "deemed denied" nor withdrawn, we proceed to decide it.

² Letter to NRC Document Control Desk, from John C. Brons, Site Vice Pres., Zion Nuclear Station (Mar. 30, 1998), Att. A at 4.

amendments also make several changes to the CTS to take account of the station's now permanently shutdown and defueled units. These changes (1) alter particular verbiage implying the units are operational; (2) reduce required shift staffing numbers and on-shift crew composition because of the units' non-operational status; (3) permit Certified Fuel Handlers -- in lieu of licensed operators -- to satisfy shift staffing requirements; and (4) change particular management titles and responsibilities to reflect a permanently shutdown organization.

On June 4, 1998, Mr. Dienethal filed his petition for leave to intervene in this license amendment proceeding. Directed by the Board to "address any shortcomings in his petition," Mr. Dienethal on July 31, 1998, filed an Amended Petition to Intervene, including 19 proposed contentions. His Amended Petition outlines various activities which bring him within Plant Zion's general vicinity, and alleges that the license amendments will increase the potential of an accident or other incident which could cause radiological injury to him and his family. In LBP-98-27, the Licensing Board ruled that Mr. Dienethal lacks standing to intervene. The Board concluded that Mr. Dienethal's "unsubstantiated allegations simply failed[ed] to demonstrate a plausible nexus between the challenged license amendments and Mr. Dienethal's asserted harm." LBP-98-27 (Nov. 5, 1998), Slip Op. At 12.

III. Analysis

Under section 189a of the Atomic Energy Act, the Commission must grant a hearing upon the request of any person "whose interest may be affected by the proceeding." 42 U.S.C. § 2239(a). Accordingly, NRC regulations require a petition for intervention to "set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, ... and the specific aspect or aspects of the subject matter of the proceeding as to which [the] petitioner wishes to intervene." 10 C.F.R. § 2.714(a)(2). In evaluating whether a petitioner's asserted interest provides an appropriate basis for

intervention, the Commission has long looked for guidance to judicial concepts of standing. Portland General Elec. Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). Accord, Yankee Atomic Electric Co. (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998); Georgia Inst. of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115 (1995). Judicial concepts of standing require a petitioner to allege (1) a particularized injury (2) that is fairly traceable to the challenged action and (3) is likely to be redressed by a favorable decision. Quivira Mining Co. (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 5-6 (1998); see Steel Co. v. Citizens for a Better Environment, 118 S. Ct. 1003, 1016-17 (1998). Accordingly, a petitioner seeking to intervene in a license amendment proceeding must assert an injury-in-fact associated with the challenged license amendment, not simply a general objection to the facility. See Quivira, 48 NRC 1 at 6; Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989).

On appeal before the Commission, Mr. Dienethal submits that his Amended Petition “unquestionably set forth facts sufficient” to link the Zion license amendments with a particularized injury -- that of an increased potential for an offsite release of radiation. Brief in Support of Petitioner’s Appeal (Nov. 16, 1998)(“Appeal Brief”) at 4. Any such offsite release, Mr. Dienethal claims, could threaten his health, safety and financial interests because he resides approximately 10 miles from the Zion plant, purchases food from farms located within 10 miles of the plant, drinks water that comes from Lake Michigan (in which Plant Zion dumps wastes), and regularly engages in various activities within the plant’s general vicinity. See generally Petitioner’s Amended Petition to Intervene and Statement of Contentions (July 31, 1998)(“Amended Petition”) at 6-9.

The Licensing Board in LBP-98-27 acknowledged that Mr. Dienethal conducts activities within the plant's general area. But the Board nevertheless noted that Mr. Dienethal simply had failed to indicate how the particular license amendments at issue would increase the risk of an offsite release of radioactive fission products. We agree with the Licensing Board, and follow our usual practice of deferring to its standing determinations. See, e.g., Private Fuel Storage, L.L.C. (ISFSI), CLI-98-13, 48 NRC 26, 32 (1998)(collecting cases). On appeal, Mr. Dienethal points to various kinds of potential injury as sufficient for standing: harm from poor management, proximity-based harm from accidents or contamination, and harm from a reduction in radiation protection personnel on duty. None of Mr. Dienethal's claims of injury is persuasive in the context of this case.

A. Management

Virtually all of the claims Mr. Dienethal advances in this proceeding either reflect or directly rely upon allegations of deliberate violations of regulatory or plant requirements by plant supervisors and managers. See Appeal Brief at 2, 4-6, 8-12; Amended Petition at 9, 12-17, 19. The heart of Mr. Dienethal's grievance appears to be the "character" and "integrity" of Plant Zion's management -- matters of considerable significance, to be sure, but matters not at issue in this license amendment proceeding. It is not at all clear how the relief sought by Mr. Dienethal -- denial of the current license amendments -- would either rectify or reduce his risk of harm from corrupt or ineffective management. Management integrity, in other words, is not linked to the agency action Mr. Dienethal challenges, and he therefore lacks standing to intervene.

Mr. Dienethal apparently believes that any license amendment proceeding can be turned into an inquiry into the applicant's management character by the simple device of making allegations about "unfitness or lack of character." See Amended Petition at 9. On the

contrary, the Commission has stressed that licensing actions as a rule do not “throw[] open an opportunity to engage in a free-ranging inquiry into the `character’ of the licensee.” Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 20), 38 NRC 25, 32 (1993). For management “character” to be an appropriate issue for adjudication in a licensing proceeding, “[t]here must be some direct and obvious relationship between the character issues and the licensing action in dispute.” Id. (emphasis added). The Vogtle proceeding Mr. Dienethal cites, for instance, involved a “total transfer” -- to a new organization -- of the “operational control and responsibility over a nuclear power plant licensed to operate at full power.” Id. at 31-32. The Commission explicitly distinguished the proceeding in Vogtle from more common licensing actions. Id. at 32.

The present proceeding concerns specific technical, administrative, and crew composition changes to Plant Zion’s technical specifications. It does not, contrary to Mr. Dienethal’s view, “concern[] the failure of Applicant to properly manage Plant Zion.” Amended Petition at 3. The license amendments at issue here have no bearing on Plant Zion’s overall management structure, personnel, or culture. Denial of the license amendments accordingly would have no impact on the plant’s management “character” or “integrity.” Although the license amendments do change some particular job titles and responsibilities to reflect the facility’s reduced activities and significantly lower risk of offsite radiological consequences now that it no longer is operational, Mr. Dienethal raises no credible claim of harm from these particular changes. At bottom, his is a broad-brushed claim of wholesale corruption at Plant Zion -- corruption allegedly condoned and thus perpetuated by “the highest levels” and indeed “every level of management.” See, e.g., Appeal Brief at 9-10. In short, as the Board held, Mr. Dienethal’s numerous allegations about Plant Zion’s managers and supervisors are beyond the scope of this proceeding. His concerns about deliberate violations of regulations may be raised

in a petition under 10 C.F.R. § 2.206. If found to have merit, his concerns could then be addressed by appropriate enforcement action.

None of Mr. Dienethal's management-driven concerns explains how any of the specific license amendments at issue here might cause him radiological injury. In a characteristic statement, Mr. Dienethal sets forth the following general claim:

The Applicant engages in willful and knowing violations of mandatory safety related procedures and the harassment and intimidation of employee's (sic) who seek to raise safety concerns. Due to these practices, Applicant cannot insure that any of the work to be performed under any of the proposed amendments to the license shall be performed in a manner consistent with the controlling procedures, regulations, laws and/or requirements of public safety.

Amended Petition at 19. To accept Mr. Dienethal's claim as a basis for standing, however, would mean that a petitioner could insert management integrity issues into all license amendment proceedings, no matter the nature of the amendment, simply by (1) alleging that management character is bad; and (2) then claiming that no license amendments should be granted because of the alleged bad character.

Indeed, Mr. Dienethal argues as much:

The applicant cannot be granted any license amendments which would directly or indirectly permit it to conduct any future work at Plant Zion or participate in any manner in the decommissioning process. The Applicant lacks the character, competence, and integrity to engage in any licensed activities at Plant Zion, including those licensed activities directly or indirectly authorized under the pending amendments to the license.

No changes should be made to Applicant's license until the harassment and intimidation of employees is halted.

Amended Petition at 19 (emphasis added); id. at 39 (emphasis added); see also Appeal Brief at 7. Mr. Dienethal's position is much too open-ended. The NRC has no legal duty, and also lacks the resources and expertise, to assess management integrity and character every time the

agency considers a reactor license amendment request (which annually number nearly a thousand).

In sum, Mr. Dienenthal has not explained how denial of the contested license amendments would enhance his personal safety or even remedy the management deficiencies that concern him. Rejecting the license amendments at issue here, which simply conform existing requirements to Zion's new shutdown status in which no operational activities remain, would do nothing to cure an ingrained culture of management misconduct at Zion, if it exists, and would do nothing to protect Mr. Dienenthal from radiological injury.

B. Proximity-Based Injury

Mr. Dienenthal's Amended Petition also relied heavily upon his claimed frequent contacts in the plant's general area. On appeal, he reiterates his general claim. See Appeal Brief at 3, 14-15. But in an operating license amendment proceeding, a petitioner cannot base his or her standing simply upon a residence or visits near the plant, unless the proposed action quite "obvious[ly]" entails an increased potential for offsite consequences. See, e.g., St. Lucie, 30 NRC at 329-30.

Here, given the shutdown and defueled status of the units, the license amendments do not on their face present any "obvious" potential of offsite radiological consequences. All of the fuel at Plant Zion is in the spent fuel pool. The significant nuclear activities still ongoing at Plant Zion are the storage and handling of spent fuel bundles in the pool. Because neither reactor will ever operate again, the scope of activities at the plant has been greatly reduced. See Safety Evaluation by the Office of Nuclear Reactor Regulation (July 24, 1998)("Safety Evaluation") at 2-3, attached to Board Notification 98-01 (Aug. 4, 1998). Accordingly, "the spectrum of accidents and events that remain credible is significantly reduced." 63 Fed. Reg. 25101, 25105 (May 6, 1998). The challenged license amendments, including reductions in crew

shift staffing, are based largely on the non-operational status and concomitant reduced scope of work at the facility. See Safety Evaluation at 1-3. The Licensing Board thus reasonably concluded that “the type of accident that credibly could occur ... from these license amendments is anything but self-evident.” 48 NRC at 277.

As the Licensing Board noted, it was incumbent upon Mr. Dienethal to provide in his Amended Petition some “plausible chain of causation,” some scenario suggesting how these particular license amendments would result in a distinct new harm or threat to him. Mr. Dienethal, however, based his claims of standing only upon conclusory allegations about potential radiological harm from the facility. His Amended Petition contains a 5 page section specifically focusing upon the standing question. See generally Amended Petition at 5-10. In it, Mr. Dienethal alleges that “if Plant Zion functions under the proposed amendments, the risk of potential injuries ... will be increased as a result of inter alia:

- (1) LOCA (Loss of Coolant Accident),
- (2) radiological concerns,
- (3) unsafe levels of radiation for the employees at the plant and the general public,
- (4) undetectable radiation contamination by employees,
- (5) contamination of the local community and the environment,
- (6) increase[d] risk of accident at Plant Zion, and
- (7) contamination of Lake Michigan.”

Id. at 8 (citation to affidavit omitted). He goes on to claim that “if Commonwealth Edison Co.’s request for amendment is approved, other imminent risks would result due to the increased potential of failing to detect radiation in adequate time and the increase[d] risk of the plant functioning unsafely and outside NRC regulations.” Id. Having cited the above-listed general

concerns, the Amended Petition then simply concludes that “[t]hese allegations are more than sufficient to satisfy the injury in fact and other standing requirements necessary to grant Petitioner leave to intervene.” Id. We must disagree.

Mr. Dienethal fails to indicate how these various harms might result from the license amendments, particularly given not only the shutdown status of the facility, but also the continued applicability of the NRC’s safety-oriented regulations governing defueled nuclear plants. As the Board stated, “[n]owhere does the Petitioner set forth [a] plausible or credible causal chain for any such accident or explain how the risk of such an accident is increased by the Applicant’s proposed amendments.” 48 NRC at 277. A petitioner cannot seek to obtain standing in a license amendment proceeding simply by enumerating the proposed license changes and alleging without substantiation that the changes will lead to offsite radiological consequences.

Indeed, some of Mr. Dienethal’s allegations quite patently have no relation to the license amendments at issue. For example, his first listed concern is over an increased risk of a Loss of Coolant Accident (LOCA). Yet, as the Licensing Board noted, such accidents could only conceivably occur in operating reactors. Id.; see also 10 C.F.R. § 50.47(c)(description of LOCAs). Mr. Dienethal’s Amended Petition is rife with unsubstantiated claims, including the unsupported (and implausible) claim that now that the plant no longer is operational, “[t]he hazards to the public health and safety ... are as severe, and in many cases more severe, than those that existed during the full operational phase of the plant.” Amended Petition at 4. He needs more than conclusory statements like these to justify triggering an adjudicatory hearing to consider the Zion license amendments.

C. Radiation Protection Personnel

Mr. Dienethal's appeal focuses in particular on one of his 19 contentions, Contention 10, which "directly challenged Applicant's request to eliminate the continuous onsite presence of a 'Radiation Protection Person.'" Appeal Brief at 3-4. Citing at length the statements made in Contention 10 (which essentially alleges that a Radiation Protection Person (RPP) must be onsite at all times), Mr. Dienethal declares that he "placed in the record" sufficient facts to indicate how "the elimination of the 'continuous onshift presence of a RPP' could result in the improper release of radioactive materials." Id. at 5. Thus, Mr. Dienethal concludes, "[a]lthough the ASLB did not address this issue," his Amended Petition "unquestionably set forth facts sufficient" to link "this requested amendment and the potential offsite release of radioactive fission products." Id. at 4.

For two separate reasons, Mr. Dienethal's radiation protection argument fails as a justification for his standing. First, the argument appears to be newly minted for appeal. It was never properly called to the Licensing Board's attention, which, understandably enough, did not rule on it. Second, Mr. Dienethal's claims about radiation protection staffing deficiencies do not suggest any scenario of potential harm more plausible than his general proximity claims.

1. New Argument On Appeal

Before the Board, Mr. Dienethal's five-page discussion labeled "Standing" nowhere even mentioned the RPP or a reduction in radiation protection staffing. At most, his Board pleading can be said to allude generally to "radiological concerns" or "unsafe levels of radiation." But he never suggested how these alleged harms might result from the amendments or from a change in radiation protection staffing.

Mr. Dienethal says that an examination of his Contention 10 would show his concern about RPP deficiencies. But the "standing" discussion in his Amended Petition did not cross-

reference or even mention Contention 10. And Contention 10 was just one of some 19 contentions, which spanned diverse topics, including Fuel Handlers, control room personnel, the fuel assembly tubing, decommissioning, loss of coolant accidents, and complaints about the applicant's management integrity. There was no reason for the Board, facing a decision on standing, to look beyond Mr. Dienethal's expressly-denominated "standing" arguments to find support for Mr. Dienethal's position. It is by no means clear from Mr. Dienethal's discussion of "standing," and from the set of submitted contentions and attached items, which included affidavits and lengthy Department of Labor hearing transcripts, that he was basing his standing claim on the elimination of a round-the-clock Radiation Protection Person. (The voluminous transcripts from DOL proceedings, for instance, deal only with alleged deliberate violations by particular supervisors in the radiation protection department and at no point address crew staffing.)

We do not expect our adjudicatory Boards, unaided by the parties, to sift through the parties' pleadings to uncover and resolve arguments not advanced by litigants themselves. The burden of setting forth a clear and coherent argument for standing and intervention is on the petitioner. "It should not be necessary to speculate about what a pleading is supposed to mean." Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit No. 1), ALAB-279, 1 NRC 559, 576 (1975). Cf. Curators of the University of Missouri, CLI-95-1, 41 NRC 71, 132 n. 81 (1995). Mr. Dienethal therefore bears the responsibility for any Licensing Board misunderstanding of his Amended Petition. Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station), CLI-93-3, 37 NRC 135, 143 n.17 (1993). He cannot revive his case on appeal on the basis of a new argument that the Board had no fair opportunity to consider. See Sequoyah Fuels Corp. (Gore, Okla. Site), CLI-97-13, 46 NRC 195, 221 (1997).

We note, parenthetically, that Mr. Dienethal is represented by counsel experienced in NRC proceedings, a factor adding to his obligation to provide clear pleadings.

2. Plausibility of Harm

Even were we to disregard Mr. Dienethal's failure to raise his RPP-based standing argument before the Board, his argument would not suffice for standing. His appellate brief suggests no plausible scenario whereby elimination of a continuous onshift RPP might lead to offsite radiological harm.

At bottom, Mr. Dienethal does not address why a shutdown and defueled facility must continue to have an around-the-clock RPP. The NRC staff found the license amendments to be "consistent with the quantity, complexity, and hazard level of the activities required for the storage and handling of nuclear fuel," the remaining major nuclear activities at the site. 63 Fed. Reg. 25101, 25106 (May 6, 1998). Nowhere does Mr. Dienethal provide any specific grounds to question this view. The staff's findings, we note, are consistent with its treatment of other shutdown nuclear power facilities, where the staff did not require a continuous onsite RPP.³

Of further note, the Zion Station procedures will still require an onsite RPP during any handling of irradiated fuel.⁴ This requirement is consistent with the Proposed Standard Technical Specifications for Permanently Defueled Westinghouse Plants, which only call for an RPP to "be on site during fuel handling operations or movement of loads over storage racks

³ See, e.g., Operating License DPR-36 for the Maine Yankee Atomic Power Station, Docket No. 50-309 (Amendment 160)(Nov. 26, 1997); Operating License DPR-61 for the Haddam Neck Plant, Docket No. 50-213 (Amendment 192)(Mar. 27, 1998).

⁴ See Letter from John C. Brons, Site Vice President, Zion Nuclear Station, to Document Control Desk, NRC (Mar. 30, 1998), Re: License Amendment Application, Attachment E.

containing fuel.”⁵ Mr. Dienethal, however, neither addresses nor otherwise throws into question the sufficiency of the ongoing Zion Station radiation protection procedures.

In addition, the mere fact that an RPP may not be onsite does not mean that no radiation protection measures are being taken. The Commission’s radiation protection requirements obligate the licensee to maintain an approved radiation protection program that is “commensurate with the scope and extent of licensed activities.” 10 C.F.R. § 20.1101(a). Such a program must satisfy regulatory requirements under Part 20, which include restrictions on the offsite release of radioactive materials (§§ 20.1101, 20.1301); mandatory surveys of both unrestricted and controlled areas to demonstrate compliance with radiation limits (§§ 20.1302, 20.1501); monitoring of personnel to assure compliance with established occupational dose limits (§§ 20.1501, 20.1502); controlled access to high radiation areas (§§ 20.1601, 20.1602); detailed records of the radiation protection program, to include information on occupational doses and radiation survey results (§§ 20.2102, 20.2103); and numerous requirements for waste disposal (§ 20.2001, et seq.).

In light of the reduced number of radiological activities at Plant Zion, and of the radiological safety requirements still applicable to the plant -- including the requirement that an RPP always be onsite during the handling of irradiated fuel -- Mr. Dienethal’s sweeping allegations simply do not lend credible support to his claim that “any reduction in radiation protection staffing does create a cognizable potential harm to the public, including but not limited to an increased risk in the release of radiation off-site.” Appeal Brief at 6 (emphasis added).

Perhaps the closest Mr. Dienethal comes to even attempting an explanation of how the license amendment changes might lead to radiological injury is when in one of his contentions

⁵ NUREG-1625, “Proposed Standard Technical Specifications for Permanently Defueled Westinghouse Plants” (Draft Report for Comment)(Mar. 1998) at 5.0-3; see also id. at 5.04-4 (Table 5.2.2-1, titled “Minimum Shift Crew Composition,” which does not require an onsite RPP).

he alleges that “the combination of staffing changes” -- such as the elimination of the continuous onsite RPP coverage, the use of certified fuel handlers, and the elimination of the site Vice President -- “would result in the elimination of experienced professionals onsite which could reasonably result in a LOCA due to human error.” Amended Petition at 40. As we have already noted, however, LOCAs are not possible at a permanently defueled facility. In this and all of Mr. Dienenthal’s arguments, he simply never suggests why the license amendment changes are not commensurate with the plant’s now shutdown and defueled status and therefore increase offsite risk. We agree, therefore, with the NRC staff and the licensee that Mr. Dienenthal has failed to provide any plausible scenario linking any of the license amendments, including the RPP change, with his alleged radiological harm.

There is yet another reason why Mr. Dienenthal’s claims about the onsite RPP are an unpersuasive basis for standing: it seems unlikely that Mr. Dienenthal would obtain any effective redress of his grievances even if he were to prevail at a hearing. After all, Mr. Dienenthal’s basic and oft-repeated claim is that radiation protection supervisors directed others to violate technical specifications, Radiation Work Permits, and other procedures, and that the radiation protection program is “riddled with intentional violations by supervisors.” See Appeal Brief at 4-5, 6, 9-12, 15; Amended Petition at 15-17, 29; DOL Testimony at 228-30, 235. The mere presence of one round-the-clock radiation protection person would add little or nothing to Mr. Dienenthal’s personal safety if, as he insists, Zion’s management routinely directs a scheme of non-compliance with safety-related procedures. Indeed, an RPP presumably was onsite during the historical incidents Mr. Dienenthal alleges, since the time period he most frequently references -- 1995-96 -- was prior to the Zion facility being shut down and defueled. According to Mr. Dienenthal, the alleged corruption bedeviling the radiation protection department has resulted in a “complete breakdown of QA [quality assurance] within that department,” and, unless this “root cause” of

violations is “investigated, identified, and corrected,” “numerous health and safety violations” will occur. Appeal Brief at 5, 12. Denial of the current license amendments, the only remedy Mr. Dienenthal seeks in this proceeding, would do nothing to improve a situation of that kind.

As we noted above, the NRC maintains a public petitioning process precisely to consider enforcement-type grievances like Mr. Dienenthal’s, 10 C.F.R. § 2.206, and it is to that process, not to a license amendment adjudication, that he must resort if he wishes to pursue his claims further.

We add one final point. Having focused his appeal largely upon the change involving the radiation protection person (Contention 10), Mr. Dienenthal then concludes his appeal with the catch-all statement that “[t]he Commission should find that Petitioner set forth sufficient facts to justify standing related to the proposed amendments identified in contentions 1, 2, 3, 5, 7, 8, 9, 10, 12, 13, 17, and 18.” Appeal Brief at 17. Just as Mr. Dienenthal raised for the first time on appeal a standing argument based upon Contention 10, he now apparently attempts to interject more new claims on appeal based upon these other contentions. For the reasons given above, raising new arguments on appeal to reverse a Board decision is unfair to the Board and the parties, and therefore impermissible in NRC practice. See p. 12, supra.

Not only did Mr. Dienenthal not develop his new standing claims before the Licensing Board, he also fails to address them in any meaningful fashion on appeal. We cannot readily discern from the license amendment application, for example, what change in “radiation monitors” (contention 17) these amendments make, if any; we note that the licensee stated that the amendments “do not affect radiation monitoring systems at Zion.” ComEd Reply to Amended Petition (Aug. 18, 1998) at 9. We also see a contradiction in Mr. Dienenthal’s complaint that harm will result from “any reduction [in] management oversight” (see contention 5), when it

is his overarching claim that the plant's management -- including "site management," the "highest levels of management," and indeed "every level of management" -- is responsible for the alleged deficiencies and safety risks at Zion. See Appeal Brief at 9-10. It is these very supervisors and managers who allegedly give "instructions that safety-related procedures be intentionally violated," "conduct[] illegal field modifications" of Problem Identification Form (PIF) requirements, and harass employees who follow procedures. See id. at 8-10. It is odd, to say the least, for Mr. Dienethal to claim injury from a reduction in their presence.

In short, we are not inclined to parse these numerous contentions, which Mr. Dienethal never properly addressed before the Licensing Board, and now makes no pretense of explaining on appeal, to find a basis for standing.

III. Conclusion and Order

For the reasons stated in this decision, the Commission hereby affirms LBP-98-27.

It is so ORDERED.



For the Commission

A handwritten signature in cursive script, reading "Annette L. Vietti-Cook".

Annette L. Vietti-Cook
Secretary of the Commission

Dated at Rockville, Maryland,
this 2nd day of March, 1999.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
)
COMMONWEALTH EDISON COMPANY) Docket Nos. 50-295/304-LA
)
(Zion Nuclear Power Station,)
Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing COMMISSION MEMORANDUM AND ORDER (CLI-99-04) have been served upon the following persons by deposit in the U.S. mail, first class, as indicated by an asterisk (*) or through deposit in the Nuclear Regulatory Commission's internal mail system as indicated by double asterisks (**), with copies by electronic mail as indicated.

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Docket Nos. 50-295/304-LA
COMMISSION MEMORANDUM AND ORDER
(CLI-99-04)

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Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 2nd day of March 1999