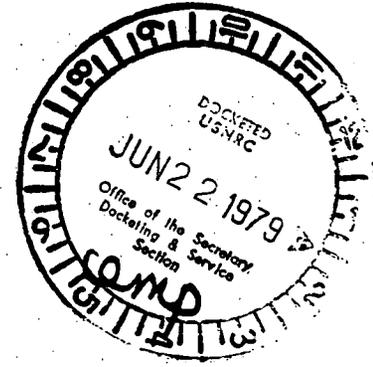


6/21/79



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	) Docket Nos.:
COMMONWELATH EDISON COMPANY	) 50-237, 50-249, 50-254, 50-265
(Dresden Station, Units 2 & 3,	) Amendments to Facility
Quad Cities Station, Units 1 & 2)	) Operating License Nos.:
	) DPR-19, DPR-25, DPR-29, DPR-30

DISSENTING OPINION OF BOARD MEMBER JOHNSON  
TO MEMORANDUM AND ORDER OF MAY 29, 1979

I must respectfully dissent from the majority's conclusion that NRDC and CBE fall within the exception to the requirement that an organization asserting standing as a representative of its members must file an appropriate authorization by a member. In my opinion, the exception to this requirement, which was first discussed in the Appeal Board's Allens Creek<sup>\*/</sup> decision, should not be applied so liberally.

In Allens Creek, in discussing the requirement that an organization seeking to intervene in an NRC proceeding as a representative of its members must identify at least one member with personal standing, the Appeal Board went on to state the need for such a member to authorize the organization to represent his or her interest. It then noted:

\*/ Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC \_\_\_\_ (April 4, 1979).

"This does not mean that, in the case of all organizations, there need be supplied a specific representational authorization of a member with personal standing. To the contrary, in some instances the authorization might be presumed. For example, such a presumption could well be appropriate where it appeared that the sole or primary purpose of the petitioner organization was to oppose nuclear power in general or the facility at bar in particular. In such a situation, it might be reasonably inferred that, by joining the organization, the members were implicitly authorizing it to represent any personal interests which might be affected by the proceeding. [Footnote omitted.] (Slip op. 37-38)

While I agree with the majority that to interpret the above language as requiring the Board to determine whether the organization's overriding purpose is to oppose nuclear power is a difficult task, I believe that the majority has misinterpreted the thrust of the Appeal Board's reasoning. In my opinion the quoted language requires us to determine whether the sole or primary purpose of NRDC and CBE is so closely related to the positions they take in this proceeding as to justify the assumption that their members have implicitly authorized their petitions.

Just as Allens Creek, supra, teaches us that we are to ensure that organizations asserting representational standing do in fact have a member with personal standing to intervene, it also teaches us to ensure that that member has authorized the intervention. To enforce one requirement in the absence of the other opens the door to intervention by organizations which have no more than a

mere interest in a problem, a door which has heretofore been closed. See Allens Creek, supra, slip op. 24-26.

This proceeding is of limited scope. I do not believe that the materials provided by NRDC and CBE support the presumption that their members with personal standing have implicitly authorized them to oppose the transfer of spent nuclear fuel between the Dresden and Quad Cities stations. The fact that NRDC and CBE usually if not always challenge the point of view of the nuclear industry and may challenge the views of government regulators on nuclear issues, is in my mind simply insufficient basis to support the assumption that their members with personal standing support the position which these organizations seek to espouse on their behalf. In these circumstances, I believe Allens Creek requires that specific authorizations from these members be furnished. The publications submitted by NRDC and CBE support this conclusion.

The publications indicate that both organizations are active opponents of nuclear (CBE would also oppose the use of coal-fired plants in California). However, the publications that this Board has before it do not demonstrate that opposition to nuclear power is a "sole or primary purpose" or even a major purpose of either organization. Quite the contrary.

The Memorandum and Order of this Board of May 29, 1979, adequately reflects the involvement of NRDC/CBE in nuclear matters; it does not reflect either the breadth or apparent emphasis on other environmental concerns of both organizations. The NRDC Annual Report, 1977-78, gives essentially equal weight to its activities and litigation on these topics: "The Coastal Zone" (offshore leasing, barrier island protection, etc.), 3p.; "The Fight for Cleaner Air" (respirable fine particulates, The Clean Air Act), 2p.; "Resources Management" (mineral leasing, grazing), 2p.; "Alaska: The Last Frontier", 1p.; "The International Environment" (including nuclear weapons proliferation), 4p.; "Clean Water", 2p.; "Energy" (wastes, reprocessing, breeder, radiation exposure), 3+p.; "Environmental Carcinogens" (toxic chemicals), 2p.; "Public Transportation" (New York City area), 1p. In addition, less than one page of the twenty-one in the NRDC Newsletter of September/December 1978 even mentions nuclear activities.

The material submitted with respect to CBE differs in format and in details, but also reflects broad environmental concerns. "CBE Environmental Review", February/March 1979, which is designated as the 1978 Annual Report, summarizes that organization's activities in Illinois, California, and Wisconsin "in five primary areas: air pollution, water pollution, toxic substances, energy

policy, and environmental education" (p.3). As a part of the summary of "Energy Policy", CBE states "... we are gradually phasing down our work on nuclear issues and focusing instead on the advantages of solar energy...."

Because of this broad concern for environmental matters, it is within the realm of reason to presume that the concern of any member for the consequences of clearcutting, for example, may completely outweigh his interest with any other activity of an organization that he perceives as an effective advocate of his much-narrower concern, even to the extent that he does not care whether that organization supports or opposes nuclear issues. In fact, a particular member residing in the vicinity might view a nuclear power plant as furthering his legitimate interests.

I therefore respectfully differ with the conclusion reached by the majority of this Board that NRDC/CBE meet the criterion for "presumed authorization" as stated in Allens Creek because neither organization, judged by its submissions to this Board, has as its "sole or primary purpose" opposition to nuclear power in general or to this licensing action in particular.

  
Elizabeth B. Johnson, Member

Dated June 21, 1979,  
at Bethesda, Maryland.