

12/13/78

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF)	
)	
COMMONWEALTH EDISON COMPANY)	Docket Nos. 50-237
)	50-249
Quad Cities Units 1 and 2)	50-254
and Dresden Units 2 and 3)	50-265
)	
Amendments to Facility)	
Operating License Nos.)	
DPR-19, DPR-25, DPR-29 and)	
DPR-30.)	

SUPPLEMENTAL BRIEF OF COMMONWEALTH
EDISON COMPANY ON AUTHORIZATION QUESTION

On December 8, 1978, NRDC, CBE and Applicant entered into a stipulation in which, based on certain additional information provided by the Petitioners, Applicant acquiesced in its unusually general identification of members provided by CBE and NRDC.* However, Applicant and Petitioners are unable to agree on whether NRDC and CBE are required to consult at least one of these affected members and obtain authority to represent him in this proceeding. Applicant files this supplemental brief in an attempt to

* The NRC Staff did not join in this stipulation. In a conference call on December 8, 1978, counsel for the Staff stated that it does not agree that NRDC and CBE have adequately identified their affected members.

focus the legal issues raised by this question.*

The purpose of the standing requirement is set forth in Sierra Club v. Morton, 405 U.S. 727 (1971), in which the Supreme Court said:

The requirement that a party seeking review must allege facts showing that he is himself adversely affected does not insulate executive action from judicial review, nor does it prevent any public interests from being protected through judicial process. It does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome. That goal would be undermined were we to construe the APA to authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences through the judicial process. (405 U.S. at 740) (emphasis added)

See also Duke Power Company v. Carolina Environmental Study Group, ___ U.S. ___, 57 L.ed. 595, 615-616 (1978). Petitioners' argument that they need not contact or consult the members whom they purport to represent in this proceeding

* The authorization issue is one of the issues which was briefed and is awaiting decision by the Licensing Board in Duke Power Company (Amendment to Materials License SNM-1733 for Oconee Nuclear Station Spent Fuel Transportation and Storage at McQuire Nuclear Station), Docket No. 70-2623. All parties have agreed that the briefs filed by NRDC, the NRC Staff and Duke Power Company may be used by the Board in this proceeding. In the December 8, 1978 conference call, Applicant requested permission to file this short supplemental brief since it is not a party in the Duke Power case. NRDC requested leave to file a short response to Applicant's brief, if necessary. No party objected to this procedure.

cuts the heart out of the standing requirement imposed by Sierra Club. Petitioners would take the actual decision as to whether intervention shall be sought in a particular case out of the hands of its affected members and would place the decision instead in the hands of their corporate officers or trustees, who have no direct stake in the outcome and merely seek to vindicate their own value preferences.

The affected members have not implicitly authorized Petitioners to represent them in this proceeding. Both NRDC and CBE conduct a broad spectrum of environmental litigation, by no means limited to nuclear issues. Therefore, the act of becoming a member of NRDC or CBE merely indicates generalized sympathy and hardly represents an unambiguous authorization of or approval of any specific future litigation. In fact, NRDC members do not even have the right to vote, and therefore have no control over organization policy. Finally, neither NRDC nor CBE has provided the Board with any assurance that their members in the affected area even know that this case is pending, or that NRDC and CBE purport to represent them here. As a result neither organization has shown that its "members" are anything more than financial contributors.

In its Duke Power brief (at 3-4), NRDC points out that its Articles of Incorporation require that a Legal Committee comprised of attorneys supervise the conduct of

all legal actions and the rendering of legal services NRDC provides. However, the purpose of the cited provision is obviously to ensure that despite the corporate form, the practice of law will be conducted by attorneys. In contrast, whether or not a given lawsuit will be initiated has never been thought to constitute the practice of law, nor have such decisions ever been reserved to lawyers.

NRDC also suggests that since an applicant need not consult its shareholders before it files an application for a license amendment, NRDC should not have to consult its contributors before it seeks to intervene. (NRDC Duke Power brief, at 4-5). But this analogy is inapposite. In this proceeding, Applicant is pursuing its own corporate business interests. These corporate interests are sufficient in themselves to confer standing, without reference to the interests of Applicant's shareholders. In contrast, NRDC and CBE do not seriously allege that they will suffer any corporate injury as a result of the proposed action. Their claim to standing stands or falls on their claim to represent third persons who could themselves show standing. Under such circumstances, the question of whether these contributors have authorized NRDC and CBE to represent them is crucial.

Applicant believes that requiring Petitioners each to attempt to find at least one affected member who will

authorize what they want to do on that member's behalf is not burdensome, either in absolute terms or in comparison to the expenses usually incurred by all parties in NRC licensing proceedings.

Respectfully submitted,

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By 
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December 15, 1978

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CERTIFICATE OF SERVICE

I, John W. Rowe, hereby certify that copies of
SUPPLEMENTAL BRIEF OF COMMONWEALTH EDISON COMPANY ON
AUTHORIZATION QUESTION in the above-captioned proceeding
have been served on the following by deposit in the United
States mail, first class, this 15th day of December, 1978:

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U.S. Nuclear Regulatory
Commission
Washington, DC 20555
Attn: Docketing and Service

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Office of the Executive Legal
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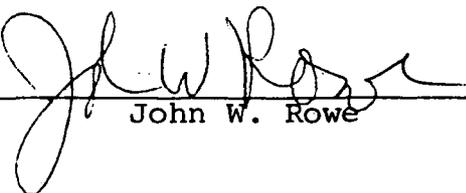
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