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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
COMMONWEALTH EDISON COMPANY,	)	Nos. 50-237
et al.	)	50-249
	)	50-254
(Dresden Station, Units 2 and 3,	)	50-265
and Quad Cities Station, Units	)	
1 and 2)	)	

REPLY OF COMMONWEALTH EDISON COMPANY TO NATURAL RESOURCES DEFENSE COUNCIL'S BRIEF RELATING TO PETITION FOR LEAVE TO INTERVENE

On September 21, 1978, Natural Resources Defense Council ("NRDC") and Citizens for a Better Environment ("CBE") filed a petition for leave to intervene in this proceeding. The Applicant, Commonwealth Edison Company ("Edison") and the NRC Staff by their answers objected to the petition because it failed to set forth "with particularity" as required by 10 CFR § 2.714 the interest of the petitioners in this proceeding and how that interest might be affected. By permission of the Licensing Board, NRDC filed a response which argued that NRDC and CBE need not disclose the names or addresses of the members whom they claim to represent in this proceeding because those members have a constitutional right to remain anonymous. On Octo-

ber 30, 1978, Edison requested from the Board leave to file this reply.

It is clear that without the name and address of at least one member whom NRDC and CBE claim to represent in this proceeding, their petition for leave to intervene does not meet the requirements of 10 CFR § 2.714.[1] That section requires that the interest of the petitioners be set forth "with particularity" and Sierra Club v. Morton, 405 U.S. 727 (1971) establishes that the interest of such an organization can only be demonstrated by showing that it represents members who may suffer "individualized injury" as a result of the proposed action. 405 U.S. at 740. The requirement of individualized injury is fully applicable to NRC proceedings, Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLJ 76-27, 4 NRC 610 (1976); and it is reflected in numerous cases which require that an organization seeking to intervene must make a particularized showing of how its members are affected by a proposed licensing action. See, e.g., Allied-General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328,

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1. CBE alleges merely that it has 3000 members in the Chicago vicinity. NRDC alleges that it has "approximately 40 members" who live within 20 miles of Dresden or Quad Cities or that portion of Interstate Route 80 which connects Morris, Illinois with Rock Island, Illinois. Neither organization alleges that the members so identified have authorized NRDC or CBE to intervene in this proceeding on their behalves.

3 NRC 420 (1976); Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 488 (1973); Duquesne Light Company, et al. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243 (1973); Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737 (1978); Consumers Power Company (Midland Plant, Units 1 and 2), Dkt. Nos. 50-329-0L, 50-330-0L, Memorandum and Order of the Licensing Board (August 14, 1978).[2] For example, in Barnwell, the Appeal Board ruled that a petition to intervene filed by the American Civil Liberties Union of South Carolina (ACLU/SC) was defective because it lacked "a particularization of how the interests of one or more members of the ACLU/SC might be adversely affected by the grant of the sought materials license." 4 NRC 420, 422. And in the Beaver Valley case, the Appeal Board held that the petition for leave to intervene of a group called the Environmental Coalition Nuclear Power was properly denied, stating:

> At the very least, the petition should have identified a coalition member who lives or conducts substantial activities in reasonable proximity to the facility site and whose interest may be affected by the proceeding. (6 AEC 243, 244 n.2 (1973))

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2. NRDC attempts to distinguish Midland on the grounds that nowhere does the Board explicitly require that the name and address of a member be disclosed (NRDC Brief at 6). We believe that this requirement is certainly implicit in the Board's memorandum and order, read as a whole.

Nevertheless, NRDC argues that "it is not necessary to identify particular members or their addresses to establish their existence" because counsel's signature appears on the petition, and therefore the statements contained therein may not be questioned unless we mean to challenge his veracity. (NRDC Brief at 2-3). NRDC professes to be "deeply disturbed" by the request that NRDC and CBE identify the members they claim to represent in this proceeding. (NRDC Brief at 6).

The short answer to this argument is that the requirement of particularity is found in the Commission's rules of practice and the justification for this requirement may not be relitigated in this proceeding. The rules of practice are provided for the protection and convenience of litigants and for the orderly resolution of disputes. There is nothing disturbing or sinister in Edison's demand that these rules be applied to NRDC's and CBE's petition. Finally, it is ridiculous to assert that Edison must call Mr. Roisman a liar before it can invoke the requirement of 10 CFR § 2.714 that the petition shall set forth the interest of the petitioners with particularity. A lawyer's signature only signifies that "to the best of his knowledge, information and belief" the statements made are true. 10 CFR § 2.708. This hardly means that all allegations which appear above a lawyer's signature must be treated as having been

conclusively established and are not subject to independent verification.

There are a number of very good reasons why Edison would like to see NRDC and CBE comply with the Commission's rules of practice. The name and address of at least one member for each organization would allow Edison and the Board to verify that NRDC and CBE have authority to participate in this proceeding. In view of the fact that NRDC does not extend voting privileges to its members, and considering the lack of any allegation in the petition that the members affected have been consulted with respect to this proceeding, the authority of NRDC to represent any individual member in this proceeding has not been established. One reasonable inference which can be drawn from the petition is that NRDC has merely reviewed its mailing lists to locate members in the appropriate geographic area upon whom it can base a claim to standing and without consulting them filed a petition in this proceeding.[3]

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3. If true, such a procedure would be totally inconsistent with the purpose of the standing requirement, which is "to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome." Sierra Club v. Morton, 405 U.S. 727, 740 (1971). The practical effect of any holding that organizations such as NRDC need not disclose the members whom they represent in adjudicatory proceedings would be to completely undercut Sierra Club v. Morton and to free such organizations from any direct accountability to the particular members they purport to represent.

Further, the name and address of at least one of the 3000 members whom CBE claims to represent and a showing of individualized harm to that person would enable this Board to avoid making the sweeping and unwarranted ruling that anyone "in the vicinity of Chicago, Illinois" (whatever that means) is entitled to intervene as of right in this licensing proceeding.

NRDC seeks to avoid the application of the Commission's rules of procedure in this case by relying on NAACP v. Alabama, 357 U.S. 449 (1958), and Bates v. City of Little Rock, 361 U.S. 516 (1960). This reliance is misplaced for four reasons.

First, in both NAACP v. Alabama and Bates, the Supreme Court protected the NAACP's membership lists against forced disclosure. In this case Edison doesn't want NRDC's membership list or that of CBE. Edison doesn't care who contributes to or participates in the activities of either organization. Edison merely wants NRDC and CBE to identify by name and address the one or more particular members whom they claim to represent in this proceeding, together with an individualized showing of possible injury to such members. The freedom of association of NRDC's and CBE's members, and their right to privacy in such association, are not implicated.

Second, NAACP v. Alabama and Bates were proceedings initiated by the governmental authorities seeking to

compel disclosure. In contrast, NRDC and CBE have voluntarily thrust themselves and the members they claim to represent into this proceeding. If these particular members have indeed authorized this intervention--a fact which has not yet been established--presumably they weighed the possible loss of anonymity against the perceived benefits of litigation. This choice is the same one made by countless other litigants in other contexts every day. There is no constitutional difficulty in insisting that it be made in NRC licensing proceedings. And, of course, if on reconsideration the loss of anonymity seems to the particular member involved to be too great a price to pay, NRDC and CBE can simply withdraw their petition.

Third, in both NAACP v. Alabama and Bates, the court expressly found that the governmental authorities had no substantial interest in obtaining the information sought. See NAACP v. Alabama, supra, 357 U.S. at 4624-6; Bates, supra, 361 U.S. at 525-527. In this case Edison and the Board have a compelling interest in seeing that the Commission's rules of procedure are complied with, and in particular in satisfying themselves that expensive, arduous and time-consuming litigation is not undertaken or prolonged, as the Supreme Court put it, "at the behest of organizations ...who seek to do no more than vindicate their own value preferences through the judicial process." Sierra Club v.

Morton, 405 U.S. 727, 740 (1971). That legitimate governmental interests in disclosure of information can outweigh speculative fears concerning the consequences of disclosure is clear from Buckley v. Valeo, 424 U.S. 1, 64-74 (1976).

Finally, in NAACP v. Alabama, the court found that:

> Petitioner has made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility.

357 U.S. at 462. A similar finding based on "substantial uncontroverted evidence" was made in Bates v. City of Little Rock, 361 U.S. 516 at 523-4. The attempt of NRDC and CBE in this case to show that similar circumstances exist with respect to their members is totally inadequate.

The Adams' affidavit amounts to mere conjecture about the possible effects of disclosure of membership lists and lists of contributors. Disclosure of such lists is not an issue in this case.

The Bossong affidavit describes "preliminary research" which gives rise to "strong speculation" that illegal activities have been directed against antinuclear activists. Apart from some egregious references to actions supposedly taken in North Carolina by another private utility, the affidavit contains no specifics to back up these

charges. Moreover, nothing in the affidavit even remotely connects Commonwealth Edison Company to the alleged persecution of antinuclear activists.

Finally, David Dinsmore Comey states his "belief" that release of the names of CBE members would result in harassment, intimidation and other "unsavory tactics" directed against them. No specific basis for this belief is given.

None of the affidavits allege that the fears articulated are shared by those members upon whom NRDC and CBE rely to establish standing. Neither the NRDC brief nor any of the affidavits allege that the particular members involved have asked that their identities not be disclosed in this proceeding. Further, these affidavits fail to establish any credible possibility such disclosure will in fact result in harassment or intimidation. Indeed we regard as highly offensive the insinuation in the NRDC brief, based on nothing more than these speculations, that Edison engages in harassment and intimidation. Such unsupported and irresponsible charges do not provide a justification for making an exception to the normal rules of practice.

The petitioners should be required to amend their petition to include the names and addresses of one or more members whom the represent in this proceeding and upon whom

they base their claim to standing, together with a particularized showing of possible injury to those individuals.[4]

Respectfully submitted,

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November 2, 1978

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4. NRDC and CBE have not requested to intervene in this proceeding as a matter of discretion, and therefore we have not addressed that possibility.

We should like to bring this Board's attention to the circumstance that similar issues to those discussed here are currently being briefed for decision by the Licensing Board in Duke Power Company (Oconee-McGuire), Dkt. No. 70-2623.

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CERTIFICATE OF SERVICE

I, Philip P. Steptoe, hereby certify that copies of "Reply of Commonwealth Edison Company to Natural Resources Defense Council's Brief Relating to Petition for Leave to Intervene" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 2nd day of November, 1978:

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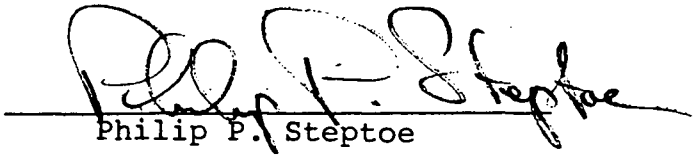

Philip P. Steptoe