

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of)
)
COMMONWEALTH EDISON CO., et al.) Docket Nos. 50-237
) 50-249
(Amendments to Facility Operating) 50-254
License) 50-265

NATURAL RESOURCES DEFENSE COUNCIL RESPONSE
TO COMMONWEALTH EDISON'S AND STAFF'S ANSWERS TO
PETITION FOR LEAVE TO INTERVENE*

In their answers, Applicant and Staff (Answerers) challenge the standing of both Citizens for a Better Environment and NRDC. The basis for the challenge appears to be that the interest of the petitioners is not set forth "with particularity" because the names and addresses of the members whose interests petitioners represent have not been revealed. Imposition of such a condition on Petitioners' right to intervene is irrelevant to the determination of their right to intervene and violates the constitutional rights of their members.

I. Standing

Answerers fail to provide any rational argument for requiring that the names and addresses of members be disclosed. Such disclosure is not needed to establish particularized harm.

*/ Leave to file a response by October 23 was granted by a Board order dated October 13 which was docketed October 16 and received by us on October 19.

The petition clearly states (pp. 3-4) that members of both organizations may be adversely affected by the increased "danger of the release of dangerous radioactive material" and the increased "public exposure to radiation" from increased handling and transportation of spent fuel. At this stage in the development of nuclear power, it is hardly necessary to spell out the specific genetic and somatic effects which could occur from such exposures in order to particularize the harm to which petitioners' members may be subjected.*

The disclosure of names and addresses is not needed to establish that the petitioners could in fact suffer the adverse effects alleged. It has long been accepted that 30-40 miles from a reactor site is sufficiently close to be within the geographic zone of interest. Northern States Power Co. (Prairie Island), ALAB-107, FAI-73-3, 188, 190. The members of both CBE in the Chicago vicinity and NRDC along the transportation route clearly meet this test. In addition, the airborne transportation of radioactive materials is clearly possible beyond the 30-40 mile zone as recognized in WASH-1400 (Main Report, p. 94, fig. 5-9).

It is not necessary to identify particular members or their addresses to establish their existence. With the recent amendment of 10 CFR § 2.714, the Petition need not be under oath

*/ In Public Service Company of Indiana (Marble Hill) ALAB-322, 3 NRC 328, 338, the Appeal Board described petitions as adequate which "fairly allege that coalition members live in reasonable proximity to the site of the proposed facility and fear that their health, safety and property interests may be adversely affected by its operations." These are precisely the allegations contained in the petition here.

and the signature of a lawyer is considered adequate to verify the statements at least until an allegation is made to challenge the lawyer's veracity, and that has not been done here.

In short, Answerers fail completely to establish any problem they perceive with the petitioners' standing which would be cured by disclosure of the names and addresses of Petitioners' members. What remains is that Answerers appear to be merely curious about the names of members of CBE and NRDC. That curiosity takes on added implications in light of the pronouncements of the Supreme Court in NAACP v. Alabama, 357 U.S. 449, 460-62 (1958), and Bates v. City of Little Rock, 361 U.S. 516, 523 (1960). In NAACP, supra, the State of Alabama sought to require the NAACP to reveal the names and addresses of its members as a condition of doing business in the State. The Supreme Court held (357 U.S. at 59):

If petitioner's rank-and-file members are constitutionally entitled to withhold their connection with the Association despite the production order, it is manifest that this right is properly assertable by the Association.

* * * *

Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close

nexus between the freedoms of speech and assembly.

* * * *

It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.

* * * *

Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

* * * *

It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. When referring to the varied forms of governmental action which might interfere with freedom of assembly, it said in *American Communications Ass'n v. Douds*, supra, 339 U.S. at page 402, 70 S.Ct. at page 686: "A requirement that adherents of particular religious faiths or political parties wear identifying arm-bands, for example, is obviously of this nature." Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order. Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

We quote extensively from the opinion because it is so clearly on point. As in NAACP, there is here no legitimate need for the names and addresses. As in NAACP, there is here evidence (Bossong, Comey and Adams affidavits) that disclosure of the names and addresses will inhibit the freedom of association of the existing and prospective members of CBE and NRDC.

The attached affidavit of Kenneth Bossong of the Citizens Energy Project discloses that citizens who oppose the actions of utilities are increasingly being subjected to harrassment, surveillance and other violations of their constitutional rights. The affidavits of David Comey, President of CBE, and John Adams, Executive Director of NRDC, indicate that Petitioners are not unmindful of these tactics and that efforts to recruit members would be severely hampered if public disclosure of members' names were a prerequisite of performance of the litigative functions of CBE and NRDC. Petitioners' members have a constitutional right to keep their names and addresses confidential and those members have a right to be free from the risk of harrassment, surveillance and other infringements of their right of free speech and association which would be created by disclosure of their names and addresses.

We are deeply disturbed by the Answerers' demand that we disclose the names and addresses of our members and the lack of plausible legal foundation for such a demand. Such a tactic,

if successful, would gravely injure the efforts of citizen organizations to attract membership support for their activities. In another context, utilities frequently argue in opposition to citizen requests for intervenor funding that intervenor organizations should be supported by member contributions. Now this utility is demanding as a condition of intervenor participation in proceedings that it take actions which will deter the effort to attract broad membership support. Nothing in the Atomic Energy Act or the Commission's regulations* requires such a result and if they did they would be unconstitutional.

II. Appropriateness of Yet To Be Filed Contentions

While recognizing that there is no legal basis for challenging at this time the appropriateness of contentions which have not yet been filed, Applicant nonetheless devotes several pages to speculation about the possible appropriateness of these yet to be filed contentions. Obviously this is not the time to respond to such speculation. It is pertinent to make clear how we believe such a challenge to appropriateness of a contention should be handled.

*/ Applicant's reliance on Consumers Power Co. (Midland), Dkt. Nos. 50-329, 330-OL, Memorandum and Order of Licensing Board (Aug. 15, 1978) is totally misplaced. Nowhere in that case does the Board require that the name and address of a member be disclosed. It allows challenges to the asserted address of one named member if there are bona fide doubts. Applicant asserts no doubts regarding the presence of CBE and NRDC members within the zone of interest identified in the Petition here. Of course if Applicant chooses to make such a challenge, we are entitled to an evidentiary hearing on the challenge prior to any ruling on intervention. Florida Power & Light Co. (St. Lucie No. 2), Dkt. No. 50-389A, Commission Memorandum and Order (June 21, 1978) slip op., pp. 13, 14.

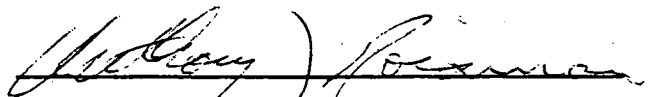
First, the purpose of § 2.714 is to set forth non-substantive standards for the admissibility of contentions. Its requirements address the form of contentions, their clarity and the clarity of bases. The admissibility of a contention is not dependent upon its substantive validity, which is subject to challenge only after the contention has been admitted.* Nonetheless in some cases the validity of a contention is challenged when it is filed based on legal grounds. Such challenges should be made under § 2.749 so that the parties are able to clearly identify the relevant facts which are or are not in dispute, thus simplifying the task of the Board in resolving the controversy.** Whether the provisions of § 2.749 are or are not followed, it is apparent that the intervenor should have the opportunity to respond to the substantive challenge to its contention. We therefore urge the Board to establish a schedule for briefing challenges to any contentions which allows intervenors 15 days from the filing of any challenge to respond to the challenge in writing. We would also urge the Board to require that challenges to contentions which are not challenges to form be filed pursuant to § 2.749.

*/ Duquesne Light Co. (Beaver Valley), ALAB-109, 6 AEC 243, 244-245.

**/ Northern States Power Company (Prairie Island), ALAB-107, 6 AEC 188, 194, affirmed on this point inter alia CLI-73-12, 6 AEC 241, 242.

Of course none of these procedures may be required if Applicant and the Staff realize, as we believe they should, that the contentions we will file are unassailable on legal grounds.

Respectfully submitted,



Anthony Z. Roisman
Natural Resources Defense Council
917 15th Street, N.W.
Washington, D.C. 20005
(202) 737-5000

Dated: October 23, 1978

20 October 8



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	Dockets Nos. 50-237
COMMONWEALTH EDISON COMPANY et al.)	50-249
)	50-254
Amendments to Facility Operating Licences))	50-265

AFFIDAVIT OF DAVID DINSMORE COMEY

Now comes David Dinsmore Comey, and being duly sworn on oath, deposes and states that he is of legal age, is an officer and director of Citizens for a Better Environment (hereinafter CBE), an intervenor in the above-captioned proceeding, that he is competent to testify as to the matters stated herein, and if called to testify, would testify on personal knowledge as follows:

1. My name is David Dinsmore Comey. I reside at Suite 6012, 505 North Lake Shore Drive, Chicago, Illinois. I am a citizen of the United States of America, and the State of Illinois.
2. I am President of CBE and a member of its Board of Directors. I have held these positions since July, 1976. CBE is an environmental research and litigation organization that takes advocacy positions on a wide range of public policy matters.
3. I am responsible for administration of the organization, including its fund-raising, most of which is from annual door-to-door canvassing of our members in the states where we have offices.
4. Because our members and other contributors have made it clear to our canvassing staff and to me personally that they do not wish to have their identities revealed or our membership list made available to other organizations, CBE has always made it a strict policy not to release our membership list to any organization, either private

or governmental. When such requests on the part of government have been made in the past, they have been denied, and we have always been upheld.

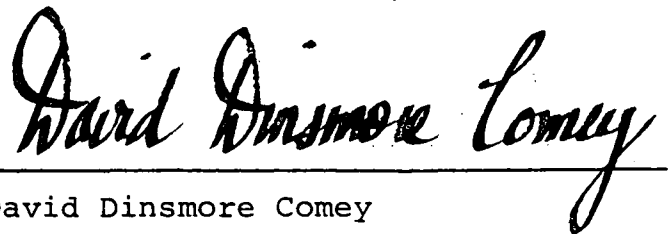
5. We believe that we thus have a contractual relationship with our members not to make their names available, and that for us to do so would violate that contractual relationship.

6. We also believe that release of the names of our members would have an adverse effect on our ability to raise funds, inasmuch as many of our members are persons of considerable renown and prestige in their communities and work for companies and governmental agencies against whom we litigate. Publication of their names would probably result in reprisals that would have a chilling effect on our future financial viability and jeopardize their civil liberties.

7. Based on past experiences in a number of litigation instances with the Commonwealth Edison Company, I believe that release of the names of CBE members would result in harrassment, intimidation and other unsavory tactics against our members.

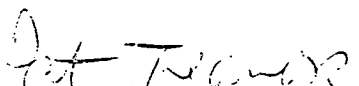
8. We therefore will not, under any circumstances whatsoever, release our membership list.

I swear the above is true and correct to the best of my knowledge.



David Dinsmore Comey

Subscribed and sworn before me on this 20th day of October 1978, in the County of Cook, City of Chicago, State of Illinois.



Pat Treanor, Notary Public

My Commission Expires Nov. 23, 1982

Subscribed and sworn to before me this 23rd day of October 1978
at Washington, D.C.

John A. [Signature]
Notary Public

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of
COMMONWEALTH EDISON COMPANY

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50-265

et. al.

Amendments to Facility
Operating License

AFFIDAVIT OF
JOHN H. ADAMS

-----X

JOHN H. ADAMS, being duly sworn, deposes and says:

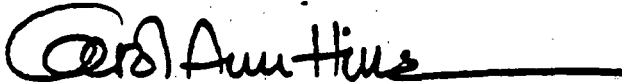
1. I am the executive director of the Natural Resources Defense Council, Inc. (NRDC), a not-for-profit corporation organized and existing pursuant to the laws of the State of New York with its principal offices at 122 East 42nd Street, New York, New York and other offices in Washington, D.C. and Palo Alto, California. I have held the position of executive director for eight years and have full knowledge of NRDC's activities, including membership and fund-raising matters.
2. It has been and continues to be the policy of NRDC not to make available the names and addresses of its members and contributors.
3. Due reason for this policy is the desire to protect our donors' expectations of privacy. Our members and contributors have always assumed, and we have always agreed, that financial transactions between individuals and philanthropic organizations must remain fully confidential. This is especially important for organizations such as NRDC which frequently assume advocacy roles in public policy deliberations.

4. A second reason for this policy is the potential adverse impact on NRDC's financial stability which disclosure of information about members and contributors would have. Such disclosure might inhibit further participation by currently active donors, and could have a chilling effect on potential future support.

JOHN H. ADAMS

Sworn to before me

this 19th day of October, 1978



CAROL ANN HINE
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4512742
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1979

63 64 65

AFFIDAVIT

I, Kenneth E. Bossong, affirm and hereby say:

I am 28 years of age and reside at 1413 "K" Street, N.W., Washington, DC 20005; my telephone number is 202-783-0452.

I am the Director of the Citizens' Energy Project located at 1413 "K" St, NW Washington, D.C. 20005. I have worked with the Citizens' Energy Project and its predecessor organization the Center for Science in the Public Interest since September 1973.

The Citizens' Energy Project is a non-profit (501 c-3) research organization conducting work in the areas of energy policy, environmental protection, and consumer protection. A major research issue focused on by the Citizens' Energy Project (hereinafter referred to as C.E.P.) has been the subject of civil liberties, nuclear power, and utilities. Since May 1976, the Citizens' Energy Project has been researching and documenting instances of violations of the civil liberties of citizens who have been critics of nuclear power. A report on this subject is now being readied for publication.

Research to date has revealed repeated and multiple instances of files being formed and kept by private utility companies, local police units, governmental agencies -- federal, state & local, and private firms & associations. The files have been compiled by the government agencies and utilities and other organizations on citizen groups, individual citizens who have expressed opposition to nuclear power. Such files have also been developed and maintained on nuclear researchers, nuclear workers, and citizens living within the proximity of nuclear plants and other nuclear facilities.

Research to date has also given rise to strong speculation of wire-tapping of phones, break-ins into offices & private residences, and undercover infiltration of citizen groups opposing nuclear power. C.E.P. has documented multiple instances of the personal files of individual anti-nuclear activists being broken into and

searched. We have documented instances of police informers infiltrating anti-nuclear organizations and other groups suspected of being anti-nuclear for the purpose of gathering and relaying information to police units and private organizations. We have documented instances of private associations planting "observers" at a variety of anti-nuclear gatherings in order to determine who is present, what was said, and what actions the anti-nuclear groups are contemplating.

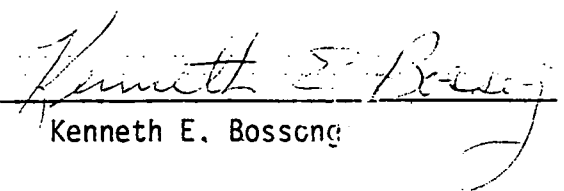
Research to date has further documented that known anti-nuclear activists have been harassed through such tactics as late-night telephone calls, tailgating of their cars, photographing by police and other agents, and vandalism of their property.

Research to date has revealed that many of the files kept by government agencies, utility companies, police units, and other private organizations on anti-nuclear spokespersons has included much inaccurate information.

Preliminary research suggests that Duke Power has been involved in several attempts to discredit anti-nuclear activists in that state. Research to date indicates that Duke Power has sought to discredit several reporters who have written about the Perkins Nuclear Power Plant and other nuclear construction programs in North Carolina. Preliminary research also indicates that Duke Power was involved in an effort to discredit a Charlotte, NC anti-nuclear activist by contacting his employer and seeking his dismissal.

Preliminary research also indicates that other anti-nuclear activists in North Carolina have been harassed when their anti-nuclear sentiments have been made public. In one instance, a Wake Forest faculty member was apparently denied tenure because of his anti-nuclear activism.

I swear that the facts contained herein are true and correct to the best of my knowledge and belief.


Kenneth E. Boscong