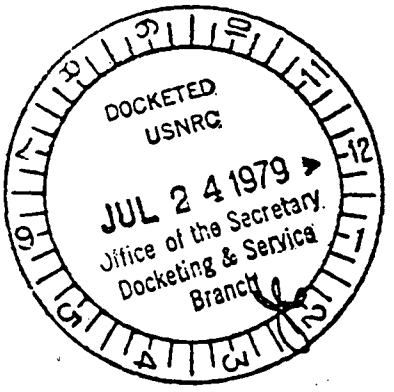
LBP-79-20
July 23, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

SERVED JUL 24 1979

ATOMIC SAFETY AND LICENSING BOARD



Charles Bechhoefer, Chairman
Dr. George C. Anderson, Member
Dr. M. Stanley Livingston, Member

In the Matter of	)	
CONSUMERS POWER COMPANY	)	Docket No. 50-255 SP
(Palisades Nuclear Plant)	)	

SPECIAL PREHEARING CONFERENCE ORDER

This proceeding concerns the application of Consumers Power Co. (hereinafter Licensee) for an amendment to its Provisional Operating License No. DPR-20 for the Palisades Nuclear Plant, a pressurized water reactor located in Covert Township, Van Buren County, Michigan. The Licensee is seeking permission to remove and replace the plant's steam generators. In response to the January 29, 1979 Notice of Opportunity for Hearing (44 Fed. Reg. 5732), a timely petition for leave to intervene was filed by the Great Lakes Energy Alliance (GLEA).

The Licensee and NRC Staff filed responses to the petition, opposing GLEA's intervention. They each claimed that GLEA had not demonstrated standing to intervene and that it had not proffered a viable contention. In our Memorandum and Order of March 30, 1979, we alluded to certain deficiencies in the GLEA

Dupe 7909250321

petition but, in accord with 10 CFR §§2.714(a)(3) and 2.714(b), we permitted the Petitioner to amend its petition and the other parties to respond. GLEA filed a supplemental petition on April 20, 1979. The Licensee filed a response; the NRC Staff elected not to do so. We scheduled a special prehearing conference to consider the petition. See 44 Fed. Reg. 23953 (April 23, 1979).

At the conference on May 9, 1979, GLEA, the Licensee and the NRC Staff all appeared. The Petitioner was not represented by counsel but participated through one of its members. GLEA provided considerable additional information concerning its standing to participate in the proceeding but, after considerable questioning by the Board, it became apparent that the lay representative had little idea of the requisites for a valid contention (Tr. 70-74, 78-79). NRC rules mandate at least one valid contention as a condition precedent to intervention (see 10 CFR §2.714(b)). Therefore, during the course of the conference, the Petitioner sought an opportunity to reformulate its contentions, and we permitted it to do so (Tr. 80-85, 94). We discussed the amended contentions with the parties and permitted the Licensee and NRC Staff to respond in writing by May 30, 1979 (Tr. 138). Both did so. And both reiterated their previously expressed position that none of the contentions comports with the requirements of the NRC Rules of Practice. The Licensee also took that opportunity to expand

upon its earlier statements on standing, repeating its view that GLEA had failed to demonstrate that it has standing of right and that GLEA should not be granted discretionary standing.

For reasons hereinafter set forth, we conclude that GLEA has standing of right, that it has advanced three valid contentions and, accordingly, that it should be admitted as an intervenor to this proceeding.

I.

1. The first hurdle which a petitioner must pass in order to be admitted as an intervenor is a demonstration of its standing to participate. This requirement stems from the terms of Section 189a. of the Atomic Energy Act, 42 U.S.C. 2239(a), which provides a hearing only to those "whose interest may be affected" by a proceeding.

The Commission and Appeal Board have established that, in determining whether a petitioner has standing and may participate as a matter of right, the governing test is the one utilized in the federal courts: the petitioner must demonstrate "that the outcome of the proceeding threatens one (or more) of its interests arguably protected by the statute being administered." Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC ____, ____ (May 18, 1979) (slip op., p. 4), relying on Portland General Electric Co. (Pebble Springs Nuclear Plant,

Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976) and Edlow International Co., CLI-76-6, 3 NRC 563, 569-70 (1976). Stated another way, to establish standing a petitioner must show (1) injury in fact, and (2) that the injury is arguably within the zone of interest protected by the relevant statute(s) — in this proceeding, the Atomic Energy Act and the National Environmental Policy Act (NEPA). Pebble Springs, supra, 4 NRC at 613.

An organization such as GLEA may meet the injury-in-fact test in one of two ways. It may demonstrate an effect either upon its organizational interest or upon the individual interest of at least one member. GLEA has chosen the latter course. In so electing to assert standing in a representative capacity, GLEA must identify at least one member whose interest may be affected. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC ____, ____ (April 4, 1979) (slip op., pp. 24-33). The organization must also show that, either directly or presumptively, the identified member has authorized GLEA to represent his or her interest. Id. at ____ (slip op., pp. 33-39); Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422-23 (1976). Finally, where (as here) an organization is represented by one of its members, the group must demonstrate that the member has been authorized to do so. Duke Power Co. (Oconee-McGuire), ALAB-528, 9 NRC 146, 151-52 (1979); Houston

Lighting and Power Co. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC ____, ____ (April 3, 1979) (slip op., pp. 10-11), affirmed, ALAB-549, supra.

2. As we pointed out in our Memorandum and Order of March 30, 1979, GLEA's statement of interest appearing in its February 27, 1979 petition was "fatally defective." The group supplied a general description of its organization and purposes. It alluded to members of constituent groups who reside "in close proximity" to the plant and stated that the groups have a "special concern in regard to the environmental and social impact of the replacement of defective steam generators." It also referred to certain groups which are ratepayers of the Licensee and who allegedly have an economic interest as well in the project. But it failed to identify any members or supply any authorization for GLEA to represent them. The person submitting the petition identified herself only as a "duly authorized spokesperson" who was "authorized to sign" the petition on behalf of GLEA.

GLEA's April 20, 1979 supplemental petition (which Commission rules permit as a matter of right) added one crucial element to the statement of interest: the names and addresses of seven members residing "in the vicinity" of the plant. It also referred to steam generator degradation as a serious safety problem and stated that the named individuals are "deeply concerned" about safety problems at the reactor. Finally, the GLEA

member who signed both the original and supplemental petitions identified herself as a Vice President of GLEA. In response, the Licensee continued to find inadequate GLEA's statement of interest, because (1) it did not demonstrate that the named persons have interests within the zones of interest protected by the Atomic Energy Act or NEPA; (2) it did not indicate that the members' interests may be affected by the results of the proceeding; (3) it failed to show that a member has authorized GLEA to represent his or her interests (both in terms of the members' authorization of their constituent groups to represent them and the groups' authorization of GLEA to represent their interests); and (4) the authorization of GLEA's representative to represent the group and the constituent groups was not adequate.

At the prehearing conference, GLEA provided further information on the last two of these subjects. It turned out that GLEA has both individual members and constituent group members (Tr. 10). Four GLEA members who were present at the conference indicated that they desired GLEA to represent their interests (Tr. 7-8). Each of those four persons was among the seven who had been listed in GLEA's April 20 petition. In addition, GLEA's representative read into the record a letter from another GLEA member who resides approximately 2 miles from the plant and who sent the organization a contribution to assist in its endeavor to participate in this proceeding (Tr. 9-10). Furthermore, the

GLEA representative stated that, as Vice President, she was authorized to appoint herself the organization's representative in the proceeding and, in any event, GLEA had voted at its January meeting to designate her as its spokesperson (Tr. 11). With this additional information, it is clear to us that GLEA has been adequately authorized to represent certain of its members' interests and its representative has been satisfactorily designated to act in that capacity. Indeed, the Licensee no longer appears to question these elements of GLEA's standing (see May 30, 1979 brief and Tr. 12-13).

Nor does the Licensee seriously contest that GLEA's named members possess interests which may confer standing on the organization. All of those members reside within 50 miles of the plant (Tr. 12) — indeed, their residences apparently are much closer, from approximately two to 15 miles from the plant. It is well settled that residence as far away as 40 or 50 miles from a reactor may provide a foundation for standing. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 193 (1973) (40 miles); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n. 4 (1977) (50 miles). Where, as here, the residences in question are located within 15 miles of the plant, it perforce follows that the requisite "interest" exists. Virginia Electric and Power Co. (North Anna Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979); South Texas, ALAB-549, supra, 9 NRC at ____, fn. 8.

Although the Licensee does not seriously question that GLEA may have an interest in the proceeding, it claims that there is yet another test which must be satisfied: a requirement that the petitioner delineate how its interest may be affected by the proceeding. The Licensee recognizes that in North Anna, ALAB-522, supra, the Appeal Board stated that "close proximity has always been deemed to be enough, standing alone, to establish the requisite interest." 9 NRC at 56. But it claims that the authority upon which the Appeal Board relied in ALAB-522 founded standing not only upon proximity but also upon the petitioners' "asserted concern that their physical and economic well-being might be adversely affected by the operation of the facility." Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 224 (1974). According to the Licensee, such asserted concerns also were present in ALAB-522, but they are not expressed here with adequate particularity.

We disagree. To begin with, we would tend to read the Appeal Board decision in South Texas (ALAB-549), supra, as holding that there is a presumption of standing where an organization raises safety issues on behalf of a member or members residing in close proximity to a facility. Beyond that, it is clear to us that GLEA has set forth concerns with respect to the health-and-safety and environmental aspects of the proposal under review. These concerns appear both in GLEA's statements on standing and in its contentions — both of which may be taken into account

in ascertaining whether GLEA has satisfactorily complied with the interest requirements. We have earlier alluded to GLEA's statements with respect to standing (p. 5 , supra). In its contentions, as expressed both in its original petition and in its most recently revised version, GLEA refers, inter alia, to the somatic and genetic effects of radiation on both workers and the general public, the environmental impacts of construction, and the asserted lack of an environmental impact statement. Some of these concerns may not prove to be valid; but it has never been necessary "to establish, as a precondition to intervention, that [a petitioner's] concerns are well-founded in fact." North Anna, ALAB-522, supra, 9 NRC at 56. Some of GLEA's concerns may also prove to be of little magnitude; but the magnitude of asserted harm is also not controlling. United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 689 fn. 14 (1973). In fact, it appears to us that a statement of asserted injury which is insufficient to found a valid contention may well be adequate to provide a basis for standing.

Be that as it may, GLEA's claim that an environmental impact statement should be issued in itself constitutes a showing how its members' interests may be affected. Failure to produce an environmental impact statement in circumstances where one is required has been held to constitute injury — indeed, irreparable injury. Jones v. D. C. Redevelopment Land Agency, 499 F.2d 502, 512 (D. C. Cir. 1974); Scherr v. Volpe, 466 F.2d 1027, 1034 (7th Cir. 1972); Environmental Defense Fund v. Tennessee Valley Authority, 468 F.2d 1164, 1184 (6th Cir. 1972); Izaak Walton League v. Schlesinger, 337 F.Supp. 287, 295 (D.D.C. 1971); cf. Public

Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-437, 6 NRC 630, 633 (1977). Persons residing within close proximity to the locus of a proposed action, such as GLEA's members, constitute the very class which an impact statement is intended to benefit.

The Licensee relies on several decisions which appear to stress the specificity by which a petitioner's statement of interested is articulated and which conclude that a sufficient demonstration of standing had not been profferred. Those rulings are all distinguishable from the present factual situation and hence are not controlling. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC ____ (April 5, 1979) involved the tardy claim of an organization to participate as amicus curiae on an issue which had been raised by another party. The petition recited the names of certain members residing within 40 miles of the site but it apparently made no claim that (or showing how) the individual interests of the members would be affected; rather, the petition was founded upon the organization's asserted concern with, and unique qualifications to address, a particular issue. Standing was found lacking on the authority of Sierra Club v. Morton, 405 U. S. 727 (1972). The same conclusion was reached for essentially the same reason in Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976). There, in addition, the organization was essentially interested in civil liberties

matters. Further specificity as to how an individual member's interests would be affected was clearly warranted. Finally, the portion of the Allens Creek decision relied on by the Licensee concerns only the requirement that an organization seeking intervention in a representational capacity identify particular members whose interests might be affected — a course of action which, unlike here, the organization in question there refused to follow. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC ____ (April 4, 1979). That decision has no bearing upon the question before us.

We recognize that GLEA's statement of interest might have been more precisely drafted if it had been the product of an attorney skilled in the conduct of administrative proceedings rather than by a lay member of the organization. We would be reluctant to deny intervention on that basis where, as here, it appears that the organization has indeed identified interests which may be affected by a proceeding. As the Appeal Board has stated,

> It is neither congressional nor Commission policy to exclude parties because the niceties of pleading were imperfectly observed. Sounder practice is to decide issues on their merits, not to avoid them on technicalities.

South Texas, ALAB-549, supra, 9 NRC at ____ (slip op., p. 11).

In short, we conclude that GLEA has adequately set forth how certain of its members' interests may be affected by the safety and environmental impacts of the proposal under review.[1/] and, accordingly, that GLEA has demonstrated its standing to participate in this proceeding.

II.

The second hurdle which a petitioner must pass in order to be admitted as an intervenor is the setting forth of at least one valid contention. 10 CFR §2.714(b); Prairie Island, ALAB-107, supra, 6 AEC at 194. The bases for each contention must be set forth with reasonable specificity. 10 CFR §2.714(b). In evaluating contentions, however, we may take into account the circumstance that the petitioner is not represented by counsel. Public Service Electric and Gas Co. (Salem Nuclear Generating Station,

---

1/ The economic concerns of its members set forth by GLEA are those of ratepayers and are not within the zones of interest arguably sought to be protected by the Atomic Energy Act or NEPA. Those concerns may not serve as a basis for standing, and we accordingly have disregarded them in reaching our conclusion. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977).

Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973). We also are aware of our obligation to resolve on their merits issues of potential significance to the public health and safety and the environment which are presented to us, notwithstanding certain technical deficiencies in their statements. South Texas, ALAB-549, supra, 9 NRC at ____ (slip op., p. 11). Furthermore, we may not at this stage reject a relevant contention because it lacks merit. Such resolution may occur only after an evidentiary hearing or, where appropriate, summary disposition pursuant to 10 CFR §2.749.

With that in mind, we have reviewed the contentions appearing in GLEA's initial petition, and the amended contentions[2/] presented to us at the prehearing conference. We will treat each of them here.

1. One of the topics of greatest concern to GLEA is the total radiation exposure which will accrue from the project, primarily to workers but to some extent to the public generally. This exposure is the foundation for two of GLEA's amended contentions — numbers 1 and 7 — but it appeared first in GLEA's initial petition. There, the first contention stated that the replacement

---

2/ In referring to GLEA's amended contentions, unless otherwise noted, we will utilize the numbering and wording appearing in the retyped version circulated by the NRC Staff along with its "NRC Staff Further Response to Contentions Submitted at Prehearing Conference," dated May 29, 1979.

of the generators "will require exposing workmen to hazardous levels of radiation." The second contention of the initial petition sought to raise an issue concerning the "environmental and safety review procedure" which will be used "to protect the public during the repair operations."

At the prehearing conference, GLEA supplied further explanation of these contentions. When asked to provide additional specific information about the safety hazards, GLEA's spokesperson stated that the steam generators are "highly radioactive" and that "there will be people in this area who are workers at the plant * * * that will be exposed to higher doses of radiation than is normal in an operating plant" (Tr. 38, emphasis supplied). This exposure assertedly would "impair" the workers' health and produce "genetic damage" (Tr. 38). Further, "the steam generators which are very radioactive will have to be removed from the reactor and there is a chance of airborne emissions" which could affect "people living very close to that reactor" (Tr. 39). In addition, the only way for NRC radiation standards to be satisfied is assertedly "by having many workers burnt out, as it were," inasmuch as "they will be in much higher levels of radiation exposure than normal plant operation" (Tr. 58, emphasis supplied).

As indicated earlier, at the prehearing conference, we gave GLEA the opportunity it requested to reformulate its

contentions. We took this action because of the GLEA representative's obvious lack of familiarity with the requirements for a valid contention, when viewed against the background of the potentially serious safety and environmental questions which GLEA was apparently attempting to enunciate. The radiation exposure questions evolved into two amended contentions (numbers 1 and 7). For purposes of our discussion, we here set them forth in full:

> 1. Total man rem exposure according to the applicants will be 7342 man rem. When any federal agency contemplates an action having this substantial human impact, there should be an Environmental Impact Statement (figure 4, 3-3) to consider both the [somatic] and genetic effects of this possibility.
>
> 7. The applicant will violate NRC regulations requiring occupational exposures to be kept as low as possible.

The basis of Contention 7 was said to be the same as for Contention 1 — i.e., the alleged total man-rem exposure of 7342 man-rem (Tr. 101, 123-126).

We had some trouble locating the source of the alleged 7342 man-rem exposure. It turned out that the source was Table 4.3.2 of the Licensee's Steam Generator Repair Report (SGRR) (Tr. 98, 103, 125). GLEA claims to have added up the total exposures appearing in Table 4.3.2 for various segments of the repair project (Tr. 97-98). Although we still have difficulty

in ascertaining how the exact exposure of 7342 man-rem was reached, we note that Table 4.3.2 does indicate that, under the Licensee's first-mentioned replacement methodology, the resulting exposure is said to be 4993 man-rem (of which 4070 man-rem results from one work area alone). For purposes of evaluating GLEA's contention, we will utilize the latter numbers which actually appear in the source cited.

This estimated radiation exposure to workers of about 5000 man-rem indicates that a large number of workers would be required to be employed in the project to keep the exposures to individual workers below the maximum permissible whole body dose of 1.25 rem per calendar quarter. 10 CFR §20.101(a).[3/] In addition, Commission regulations provide that licensees shall "make every reasonable effort to maintain radiation exposures * * * as low as is reasonably achievable" (ALARA). 10 CFR §20.1(c). The Licensee here claims that personnel exposure will be maintained in accordance with the ALARA requirement throughout the repair program, but to do so would likely still further increase the number of workers required to be used. In our opinion, the exposure of large numbers of workers to significant levels of radiation provides ample foundation for the

---

3/ Even were the Licensee to use workers whose doses are computed under 10 CFR §20.101(b), a substantial number of workers nevertheless will be required to be utilized. The Commission has issued new regulations, effective August 20, 1979, which impose new requirements with respect to the application of the standards of 10 CFR §§20.101(a) and (b). 44 Fed. Reg. 32349 (June 6, 1979). These new regulations are applicable to this proceeding. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 82-83 (1974).

Petitioner's contention that the Licensee's proposal would expose such a large number of workers to radiation approaching the maximum permissible dosage that it will produce a significant impact on the general public.[4/] Such exposure further provides adequate foundation for GLEA's claim that the proposal "violates" the ALARA requirements.

GLEA's amended Contention 1 claims that the referenced radiation exposures are sufficient to require the issuance of an environmental impact statement. At the prehearing conference, the Licensee appeared to defer to the Staff as to whether issuance of such a statement is required (Tr. 121-22). The Staff indicated that it presently planned to issue an environmental impact appraisal (Tr. 112).[5/] Under Commission rules, an impact appraisal must be issued in situations where an impact statement is not called for. 10 CFR §51.7. The Licensee in its May 30 response to the amended

---

4/ We disagree with the Licensee's claim that adding together man-rem doses which will be received in different phases of the project does not produce a meaningful number. Such numbers have been relied upon by the Licensee in its project proposal. See, e.g., SGRR Table 4.3.2; §§8.5, 8.7 and Table 8.8-1; §9.2.

5/ The Staff did not discuss the impact statement issue in its May 29, 1979 "Further Response To Contentions Submitted at Prehearing Conference."

contentions flatly took the position that an impact statement is not required, but its sole basis for this position was the Staff's action in Virginia Electric and Power Co. (Surry Station, Units 1 and 2), Docket Nos. 50-280, 50-281, where it issued an impact appraisal rather than a statement.

The Staff's action in the Surry case, or its proposed action here, is not dispositive of the question raised by GLEA. In the first place, we have no idea whether the impacts at Surry are at all comparable to those here. Furthermore, the Surry proceeding did not involve an adjudicatory hearing, so that the Staff's determination not to issue a statement has never been reviewed in an adjudicatory context.6/ Although the determination whether to issue an impact statement falls initially upon the Staff, that determination may be made an issue in an adjudicatory proceeding. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), et al., ALAB-455, 7 NRC 41 (1978). GLEA has raised just such an issue and, as we have seen, has provided a reasonable basis for it. In the last analysis, the significance of the impact of the project — in large part an evidentiary matter — will determine whether a

---

6/ The NRC has been asked for the third time to suspend further action on the Surry project pending preparation of an environmental impact statement. We understand that the Staff is looking again at its determination not to issue such a statement in that proceeding. See 44 Fed. Reg. 36522 (June 22, 1979). The Commission has postponed its review of two previous Staff rulings determining that an impact statement was not required. See, e.g., Commission Orders dated May 15, 1979 and June 22, 1979.

statement must be issued. 10 CFR §§51.5(a)(10), 51.5(b)(2).7/

Although Contention 7 is phrased in terms of "as low as possible," it became clear at the prehearing conference that GLEA was focusing upon the Commission's ALARA requirements (Tr. 58-59, 124-26). The Licensee and Staff each claim that the contention lacks specificity. And the Licensee refers to several ALARA measures which it is proposing to follow (SGRR §§4.3, 4.4, 4.9, 7.6, 8.7 and Table 4.3.2). But as we have stressed, the proposal — and particularly Table 4.3.2, upon which GLEA is relying — does nothing to indicate that each worker will not be exposed to the maximum levels permitted under 10 CFR §20.101(a). Further, it strongly suggests that large numbers of workers will be exposed to radiation intensities approaching the maximum permissible levels. In addition, Table 4.3.2 summarizes the man-rem exposures for three alternate methods, of which the sum for the first-mentioned method is greater than for the two alternatives. (No cost information with regard to the alternatives is provided.) Finally, GLEA alluded peripherally (initial petition par. 4, 5, 6; Tr. 39, 83, 120) to the method of transportation or the storage of the radioactive generators. Selection

---

7/ If the Staff should decide to issue an environmental impact statement, GLEA's contention might be ripe for dismissal pursuant to 10 CFR §2.749; new information raised in the statement might, of course, serve as a basis for additional contentions.

of a method of transportation or storage is subject to ALARA considerations. See, e.g., SGRR, §§4.4.4, 4.4.6, 4.4.8, and Table 4.4-2. Several transportation and/or storage methods are identified, but the proposal does not specify which of them will be utilized, despite the dramatic differences in man-rem exposure which they entail. These matters are sufficiently specific to constitute an adequate basis for GLEA's contention on the ALARA requirements.

In that context, we note that at the present time the Commission has issued no regulations which delineate the manner in which a Licensee may conform to the ALARA requirements governing occupational exposures. There is no occupational exposure equivalent of 10 CFR Part 50, Appendix I, which prescribes standards for evaluating whether exposures of the general public conform to ALARA requirements. On at least one occasion, the Appeal Board has pointed to the need for the Commission to promulgate further guidance on compliance with the ALARA requirements for occupational exposures, Prairie Island, ALAB-455, supra, 7 NRC at 57-59, 60, but thus far the Commission has not done so. Evaluation whether an occupational exposure conforms to the ALARA requirements requires consideration of both the total amount of the exposure and the financial aspects of lowering that exposure, but the Commission has not spelled out the amount which it may require a Licensee to expend to achieve lowered

radiation exposures. In dealing with the ALARA contention which we are admitting, we expect the parties to address such questions.

In sum, we admit GLEA's two contentions which raise questions about the man-rem impacts of the project, in terms of (1) the necessity of an environmental impact statement and (2) the conformance of the project with ALARA occupational exposure requirements. The two contentions stem from amended Contentions 1 and 7 (as well as original Contentions 1 and 2) and are to be construed in accordance with the foregoing discussion. They will be renumbered, respectively, as Contentions 1 and 2 and are reworded as follows:

(1) The total man-rem exposure resulting from the steam generator replacement project, as set forth in Table 4.3.2 of the Licensee's SGRR, is of such significance, particularly with respect to the somatic and genetic impacts on large numbers of workers and the resultant impact on the community, as to call for the issuance of a NEPA environmental impact statement.

(2) The Licensee's proposal is inconsistent with the Commission's requirement that occupational exposures be kept as low as is reasonably achievable, in that

a. it fails to specify that the alternatives outlined in SGRR Table 4.3.2 which produce the lowest man-rem exposures will be employed;

b. it will result in a situation where large numbers of workers will be

exposed to maximum permissible levels of radiation; and

c. it fails to specify which transportation and/or storage method will be used or whether the method producing the lowest level of radiation exposure will be employed.

2. The only other contention we find acceptable is amended Contention 4, which, as submitted, states:

> 4. The impact of the construction such as noise, dust, etc., on the surrounding environment which is a prize resort area has not been considered. This area is used by people to rest and recover from work--to maintain and improve their health. This activity will seriously affect the public health and safety of the surrounding area from construction activities alone.

The Licensee would reject this contention on the ground that the impacts of construction (such as noise and dust) on the surrounding area are considered in SGRR §§7.4, 7.4.1, 7.4.2, and 7.4.3. It, as well as the Staff, asserts that there is no basis for the contention.

Our examination of the SGRR indicates that, although construction impacts are treated, there is no consideration of the effects, if any, of such impacts on the area's resort activities. That even standard construction activities might prove inimicable to a vacation area scarcely requires discussion. GLEA is focusing primarily on the implications of a major construction activity on a resort area. For that reason, it has

provided an adequate basis for its contention.

We admit the following contention, renumbered as Contention 3:

> 3. The Licensee's SGRR does not adequately consider the impact of the construction (such as noise, dust, etc.) on the surrounding environment, which is a "prize" resort area.

3. We have reviewed GLEA's other contentions and find none of them to be acceptable,[8/] for the following reasons:

a. Amended Contention 2 raises questions concerning the Palisades Plant's quality control record, and the plant's "history of frequent breakdowns and malfunctions." It also seeks examination of plant shutdown as a project alternative.

GLEA, however, fails to point to any deficiencies in the proposed quality assurance programs for this project, which are described in §4.7 of the SGRR. It claims therefore has no relevance to this project.

8/ Contentions 3-9 of GLEA's initial petition do not appear to us to be contentions at all but, rather, areas in which GLEA has an interest. Some of the matters dealt with therein are included in the amended contentions with which we are dealing specifically. In any event, these contentions are not set forth with sufficient specificity to comply with the requirements of 10 CFR §2.714(b).

Furthermore, plant shutdown is an alternative which is beyond our jurisdiction to consider. See Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, supra, 7 NRC at 46-47 n. 4. That case involved an application for a license amendment seeking expansion of the facility's spent fuel pool. If the amendment were not granted, the plant would have been required to be shut down. Nevertheless, plant shutdown was held to be an alternative which could not be considered. That same holding is even more called for in this case. For, if we should determine that the license amendment should be denied, the plant could continue to operate under its existing license using the presently installed steam generators.9/

b. Amended Contention 3 claims the SGRR is deficient for failing to discuss "how meteorological conditions will affect the population through airborne emissions, the local usage of ground and surface water, and other local conditions." These matters are dealt with in SGRR §§6.2.2.1, 6.2.2.2, 6.2.2.3, 6.2.2.4, and in Tables 6.2-2 and 6.2-5, and GLEA has failed to point to any deficiencies in that analysis. In any event, airborne emissions of interest to GLEA (Tr. 110) are in part comprehended by Contention 2, which we have admitted.

9/ At some time in the future, the plant might have to be derated if its current steam generators remain in service. SGRR, &1.0. See also Tr. 106-107.

c. Amended Contention 5 takes issue with the conclusion in the SGRR that there are no credible "accident" considerations associated with on-site storage of the steam generators that would result in the release of radioactivity. It faults the SGRR for failing to deal with seismic considerations, tornados, or erosion of the Lake Michigan shoreline.

As pointed out by the Licensee in its May 30, 1979 answer to the amended contentions, the SGRR discusses these matters in considerable detail. See §§4.1.1.2.2, 4.4.2, 4.4.6 and 4.4.7. In addition, licensing regulations and guidelines of the original licensing of the Palisades Plant are, unless otherwise specified, assumed to apply here. SGRR §6.1.1. Seismic and hydrological aspects of the site, and tornado conditions, were evaluated in that earlier licensing. See, e.g., Staff's "Safety Analysis," dated February 7, 1967, pp. 7-9, 6. In SGRR §4.4.7, the conclusion is set forth that "there are no realistic accident scenarios which would result in the release of radioactivity from the generators during the onsite storage interval." The Board interprets the Licensee's analysis of accident scenarios to include events such as tornados, seismic activity, and shoreline erosion.

d. Amended Contention 6 raises two questions. First, it claims that no repository now exists for the safe disposal of any radioactive waste containing high degrees of radioactivity and of a size sufficient to accommodate the steam generators. But the SGRR identifies one such site (and others if the generators should be cut into sections). §4.4.3.3. GLEA has not shown that the SGRR statement is incorrect. It should be noted that the old steam generators will constitute low-level, not high-level waste.

Second, the contention claims that the SGRR fails to identify the particular licenses necessary to ship the radioactive steam generators by barge on the Great Lakes. There is no requirement that it do so.

e. Amended Contention 8 claims that the Federal Water Pollution Control Act (FWPCA) will be violated by the discharge of polluted effluents without a "valid permit." We presume that GLEA is referring to the discharge permit required in specified circumstances by §402 of the FWPCA. GLEA has identified the "polluted effluents" only in general terms, as radioactive discharges (Tr. 131, 136). Radioactive effluents discharged by a nuclear plant are not "pollutants" within the purview of the FWPCA. Train v. Colorado Public Interest Research Group, 426 U. S. 1 (1976). They thus are not covered by that Act's discharge permit requirement. In any event, the responsibility with respect to particular water quality matters covered by the FWPCA no longer resides with the Commission but, rather, has been allocated to EPA and the states. Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978). NRC thus has no authority to determine whether the Licensee might have to obtain a new FWPCA discharge permit for the project or whether an existing permit encompasses the discharges to be generated by the project. If a new permit must be obtained, it would have to be sought from an agency other than NRC. Furthermore, "[NRC] licensing is in no way dependent upon the existence of a 402 permit." Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 58 (1974) (footnote omitted).

III.

1. Because GLEA has demonstrated that it has standing and has set forth at least one valid contention, it is hereby admitted as a party to this proceeding. A Notice of Hearing, in the form of the attachment to this Order, is being issued. Discovery on the admitted contentions will commence immediately and will terminate 30 days following the issuance of the Staff's Safety Evaluation Report (SER) and Environmental Appraisal or Final Environmental Impact Statement. At a later date, the Board will establish a schedule for the filing of motions for summary disposition and, if necessary, evidentiary hearings.

2. At the prehearing conference, GLEA submitted a "Prehearing Conference Statement" which requested that the Commission provide it financial assistance in the form of fees for attorneys, witnesses and consultants. The Commission, however, has precluded the granting of such requests in hearings of this type. Nuclear Regulatory Commission (Financial Assistance to Participants in Commission Proceedings), CLI-76-23, 4 NRC 494 (1976). We are required to abide by this policy. The Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-376, 5 NRC 426, 428 (1977); Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-382, 5 NRC 603 (1977). GLEA's request accordingly must be denied.

For the foregoing reasons, the request for a hearing and petition for leave to intervene of the Great Lakes Energy Alliance (GLEA) is hereby granted. A preliminary schedule as outlined in Section III.1 of this opinion is adopted. GLEA's request for financial assistance is denied.

This Order is subject to appeal to the Atomic Safety and Licensing Appeal Board pursuant to the terms of 10 CFR §2.714a. An appeal must be filed within ten (10) days after service of this Order. The appeal shall be asserted by the filing of a notice of appeal and accompanying supporting brief. Any party other than the appellant may file a brief in support of or in opposition to the appeal within ten (10) days after service of the appeal.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

Charles Bechhoefer

Charles Bechhoefer, Chairman

Dated at Bethesda, Maryland,
this 23rd day of July, 1979.

Attachment:
Notice of Hearing