

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of)
)
CONSUMERS POWER COMPANY)
)
(Big Rock Point Nuclear)
Plant))

Docket No. 50-155

APPLICANT'S ANSWERS TO PETITIONS
TO INTERVENE

Pursuant to 10 CFR §2.714(c) Consumers Power Company ("Applicant") submits the following answers to the Petitions to Intervene received to date in this matter. Applicant opposes only the petition of Northwest Coalition and John A. Leithauser, but it requests that the participation of all petitioners allowed to intervene in this proceeding be consolidated pursuant to 10 CFR §§2.714(e)

I. Applicable Legal Standards

The Commission's regulations require that persons who seek to intervene set forth with particularity their interest in the proceeding and how that interest may be affected. 10 CFR §2.714(a)(2). For persons living "little more than a stone's throw" from a facility a mere showing of such close proximity is sufficient to establish the

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requisite interest. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54 (1979). However, for persons living fifty miles from a facility the case law establishes only that standing is not necessarily precluded. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.4 (1977).

Where an organization petitions to intervene it must base its claim to standing either on its own organizational interest or on the individual interest of at least one identified member. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC _____ (1979). In the latter case, the organization must also show that the identified member has authorized it, explicitly or presumptively, to represent his or her interest. Id.

In addition, 10 CFR §2.714(a)(2) requires that petitioner state "with particularity" the specific aspects of the subject matter of the proceeding as to which it wishes to intervene. Because of the relatively recent effective date of the current version of 10 CFR §2.714, the precise meaning of the term "aspect" as used in that section has not been clearly established by previous decisions of the Commission or its adjudicatory boards. However, if the

term is to have any meaning whatsoever, the purpose of requiring the identification of the aspect of the subject matter as to which petitioner wishes to intervene must be to allow the Licensing Board to evaluate if the aspect is a proper subject matter for adjudication in a particular hearing.^{1/} "If facts pertaining to the licensing of a particular nuclear power plant are at issue, an adjudicatory proceeding is the right forum. But if someone wants to advance generalizations regarding his particular views of what applicable policies ought to be, a role other than as a party to a trial-type hearing should be chosen." Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-128, 6 AEC 399, 401 (1973). If the only aspect or aspects of the subject matter identified in a petition are not proper subject matters for adjudication in an operating license adjudicatory hearing, the petitioner will clearly be unable to later draft one good contention within the scope of the identified aspect.

^{1/} The Appeal Board in Philadelphia Electric Co., (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 20-21 (1974) identified this as one of the reasons for the one good contention rule. While an "aspect" probably need not be as specifically drawn as a contention, and need not specify the basis for any subsequently filed contentions (10 CFR §2.714(a)(3)), it must be adequate to permit the Licensing Board to determine whether the hearing process at the operating license stage is being needlessly invoked. See: Cincinnati Gas & Electric Co. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976).

II. The Petitions to Intervene

A. Petition of Twenty-Four Persons Living Within Fifty Miles of the Big Rock Point Plant

Although this petition recites only that the signers all live within a fifty mile radius of the Big Rock Point nuclear plant, the addresses given indicate that the signers actually live in Boyne City, Petoskey, Charlevoix, and East Jordan, all within approximately fifteen miles of the plant. Accordingly, Applicant believes that this petition adequately demonstrates the interest of its signers. Further, the petition sets forth at least one specific aspect, namely the integrity of the south wall of the spent fuel storage pool, with requisite particularity.^{2/} Applicant therefore has no objection to admission of these petitioners as a party to this proceeding, provided they are required to designate a spokesman and their participation is consolidated pursuant to 10 CFR §§2.714(e). See also 10 CFR §2.715a and Duke Power Company (Amendment to Materials License SNM-1733 -- Transportation of Spent Fuel from Oconee Nuclear Station for

^{2/} Applicant does not of course concede that there is any foundation in fact to this concern. See Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB 522, 9 NRC 54, 55-6 (1979). Nor does Applicant admit that this aspect, without further clarification, would make an acceptable contention. We merely agree that petitioners have raised this issue with sufficient specificity to satisfy the Commission's pleading requirements at this stage of the proceeding.

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Storage at McGuire Nuclear Station), ALAB-528, 9 NRC 146, 150n.9 (1979). Applicant requests that the group designate an agent for service of process as required by 10 CFR §2.708(e).

B. Petition of Northwest Coalition and John A. Leithauser

This petition is deficient in that it fails to establish the requisite interest of the three petitioning organizations (collectively referred to as "Northwest Coalition") in this proceeding. If organizational interests are being represented, these interests are not identified. If Northwest Coalition instead seeks to represent the interests of individual members of its three constituent organizations, the petition is inadequate in that it fails to identify any of the affected members. Houston Lighting and Power Co., supra.

Mr. Leithauser's statement of individual interest contained in the cover letter to the Northwest Coalition petition would be sufficient to support intervention had he also identified a "specific aspect" of the subject matter of this proceeding with respect to which he sought to intervene. However, the Northwest Coalition - Leithauser petition is deficient in that no attempt is made to comply with this requirement of 10 CFR §2.714(a). The petition for leave to intervene contains nothing more than cryptic references to "deteriorating hardware at the plant site," "nuclear excursions resulting from a spent fuel accident," and the "spiritual,

social, physical and psychological vitality" of the local community. It is impossible to tell whether hidden in these vaguely worded concerns there potentially lies at least one valid, litigable contention. This failure to identify "specific aspects" also weighs against discretionary intervention, since there is nothing which would support a conclusion that petitioners' participation will assist in developing a sound record. Portland General Electric Company, (Pebble Springs Nuclear Plant, Units 1 and 2), CLI 76-27, 4 NRC 610, 616 (1976).

Applicant requests that the Northwest Coalition - Leithauser petition be denied. In the event that the petitioners are allowed to amend their petition and are able to cure the defects described above,^{3/} consolidation with other intervenors should be required.


C. Petition of John O'Neill, II

Mr. O'Neill's petition to intervene states that he is only a part-time resident of Burdicksville, Michigan, fifty miles southwest of Big Rock Nuclear Reactor, although he is "seriously considering settling in the area permanently."

^{3/} Petitioners apparently recognize these deficiencies because in his cover letter, Mr. Leithauser promises to supplement the petition to include "supporting contentions" and affidavits from Petoskey and Charlevoix citizens. Applicant has not yet received these promised documents.

Thus, Mr. O'Neill's geographical relationship to the Big Rock plant is at the very fringe of those which the Appeal Board has suggested might possibly confer standing in NRC licensing proceedings. See Tennessee Valley Authority (Watts B&W Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421n.4 (1977). Further, with the possible exception of the first aspect identified in the petition Mr. O'Neill has failed to meet the requirement of 10 CFR §2.714 that he set forth with particularity any specific aspects of this spent fuel capacity expansion proceeding with respect to which he wishes to intervene.^{4/} Although Mr. O'Neill's interest in this proceeding is marginal at best, Applicant does not object to the granting of his petition provided his participation is consolidated with that of other intervenors.

Respectfully submitted,


One of the Attorneys for
Consumers Power Company

ISHAM, LINCOLN & BEALE
Suite 4200
One First National Plaza
Chicago, Illinois 60603
(312) 558-7500

^{4/} The first aspect refers to "the possibility of increased radiation emanating from fuel rods stored in close proximity. . . . While this is far from clear, it may contain the basis for a contention. The last aspect, relating to long term storage of spent fuel, appears to be legally irrelevant in this proceeding, since the Commission has announced its intention to conduct a generic proceeding on this issue. 44 Fed. Reg. 45362, 45363, 45369 n. 26 (August 2, 1979).

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DESIGNATION OF PERSONS UPON WHOM
SERVICE SHALL BE MADE

Pursuant to 10 CFR §§2.708(e) and 2.712(b)
Consumers Power Company requests that service be made
in this proceeding on the following individuals:

Judd L. Bacon, Esq.
Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

Joseph Gallo, Esq.
Isham, Lincoln & Beale
1050 17th Street, N.W., #701
Washington, D.C. 20036

Philip P. Steptoe, Esq.
Isham, Lincoln & Beale
One First National Plaza, #4200
Chicago, Illinois 60603


Philip P. Steptoe
One of the Attorneys for
Applicant

DATED: September 4, 1979

ISHAM, LINCOLN & BEALE
One First National Plaza
Suite 4200
Chicago, Illinois 60603
(312) 558-7500

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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 CFR §2.713(a), the following information is provided:

Name: Michael I. Miller

Address: Isham, Lincoln & Beale
One First National Plaza
Suite 4200
Chicago, Illinois 60603

Telephone: 312-558-7500

Admissions: Supreme Court of Illinois
District Court for the District
of Columbia
District Court for the Northern
District of Illinois

Name and Address of
Party: Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201


Michael I. Miller (by PPS)

Dated: September 4, 1979

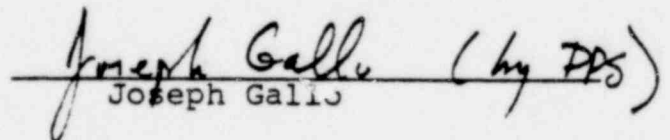
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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 CFR §2.713(a), the following information is provided:

Name: Joseph Gallo
Address: Isham, Lincoln & Beale
1050 17th Street, N.W., #701
Washington, D.C. 20036
Telephone: 202-833-9730
Admissions: District of Columbia Court of Appeals
Supreme Court of Minnesota
Supreme Court of the United States
Name and Address of Party: Consumers Power Company
212 West Michigan Avenue
Jackson, Michigan 49201

 (by DRS)
Joseph Gallo

Dated: September 4, 1979

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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with 10 CFR §2.713(a), the following information is provided:

| | |
|-------------------------------|---|
| Name: | Philip P. Steptoe |
| Address: | Isham, Lincoln & Beale One First National Plaza Suite 4200 Chicago, Illinois 60603 |
| Telephone: | 312-558-7500 |
| Admissions: | Supreme Court of Illinois Supreme Court of Virginia District Court for the Northern District of Illinois |
| Name and Address of Party: | Consumers Power Company 212 West Michigan Avenue Jackson, Michigan 49201 |


Philip P. Steptoe

Dated: September 4, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's
Answers To Petitions To Intervene" dated September 5, 1979,
have been served upon the following by deposit in the
United States mail, first class, postage prepaid, this 5th
day of September, 1979:

Docketing and Service Section
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

R. E. Cunningham*
Box 3339
Boyne City, Michigan 49712


Ms. Janis Moore, Esq.
Office of Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Jim E. Mills*
Rt. 2, Box 108
Charlevoix, Michigan 49720

Christa-Maria*
Rt. 2, Box 108c
Charlevoix, Michigan 49720

John A. Leithauser
Energy Resources Group
General Delivery
Levering, Michigan 49755

John O'Neill, II
Route 2, Box 44
Maple City, Michigan 49664


Philip P. Steptoe

* These three persons are being served as representatives
of the twenty-four citizens who jointly filed a petition
in this matter since not all of the names and addresses
on the petition are legible.