

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
NEW YORK STATE ELECTRIC AND GAS	)	Docket Nos. STN 50-596
CORP. AND LONG ISLAND LIGHTING CO.	)	STN 50-597
	)	
(New Haven 1 and 2)	)	

NRC STAFF RESPONSE TO THE PETITION FOR LEAVE TO  
INTERVENE FILED BY MEXICO CENTRAL SCHOOL DISTRICT

I. BACKGROUND

On February 9, 1979, the U.S. Nuclear Regulatory Commission (Commission) published in the Federal Register (44 Fed. Reg. 8392) notice of hearing on the application for construction permits for NYSE&G 1 & 2 (since changed to New Haven 1 and 2). The notice provided that any person whose interest may be affected could submit a petition for leave to intervene in accordance with 10 CFR § 2.714 by March 12, 1979. On February 26, 1979, a petition for leave to intervene on behalf of the Mexico Central School District (MCSD) was filed by Dr. Paul Voninski.

The response of the Commission Staff (Staff) is set forth below, in which the Staff conditionally finds that MCSD has satisfied the requirements regarding interest and specification of aspects of the proceeding upon which intervention is sought.

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## II. INTEREST

As stated in the notice, a petition for leave to intervene must satisfy the requirements of 10 CFR § 2.714 of the Commission's Rules of Practice. This regulation directs that a petitioner set forth his or her interest in the proceeding and how such interest might be affected by the result thereof, including the reasons why intervention should be permitted. 10 CFR § 2.714(a)(2). In this regard, consideration is to be given to the nature of the petitioner's right to be made a party, the nature and extent of petitioner's property, financial or other interest in the proceeding and the possible effect on such interest of any order entered in the proceeding. 10 CFR § 2.714(d). Also to be stated in a petition are the specific aspects of the subject matter of the proceeding on which intervention is sought. 10 CFR § 2.714(a)(2).

It is well settled that judicial concepts of standing are controlling in determining whether a petitioner has satisfied the foregoing requirements. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-614 (1976). Consequently, a petitioner must show "injury in fact" and that such interest is "'arguably within the zone of interest' protected by the statute". Portland General Electric Company, supra.

An organization may gain standing to intervene based on injury to itself or to its members. If the organization seeks standing on its own behalf, it must establish that it will be injured and that the injury is not a generalized grievance shared in substantial equal measure by all or a large class of citizens. In the Matter of Ten

Applications, CLI-77-24, 6 NRC 525, 531 (1977). On the other hand, an organization can establish standing through members of the organization who have interests which may be affected by the outcome of the proceeding. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976). At the same time, when an organization claims that its standing is based on the interests of its members, the organization must identify specific individual members whose interest might be affected by the proposed action, describe how the interests of each of those members might be affected and show that each of those members has authorized the organization to act on his behalf. Allied General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976).

MCSD apparently is claiming to have standing to intervene on the basis of both potential injury to itself and to the children that the district serves. With respect to the first alleged injury, Dr. Voninski, on behalf of MCSD, states that over 80% of the physical plant of the district lies within a few miles of the proposed New Haven site. In addition, Dr. Voninski indicates his concern about the impact of construction of the nuclear facility on the safe transportation of children through a potentially congested area and the effect of construction and operation of the proposed facility on the school population itself. Although the Petition does not so specify, the Staff assumes that MCSD has responsibility for providing a safe and adequate school, as well as for providing safe transportation of the students who utilize the school facilities. Accordingly, the Staff finds that MCSD has alleged an interest which may be affected by the proposed project.

The Petition does not contain an authorization from MCSD for Dr. Voninski to represent it in this proceeding. For example, Dr. Voninski does not refer to any formal action taken by MCSD declaring its intent to petition to intervene in this proceeding. Moreover, the MCSD is not a private group representing the interests of its members, and thus cannot satisfy the authorization requirement simply by indicating the consent of a high-ranking officer of the group who himself has the requisite personal interest to support an intervention petition. Cf. Duke Power Company (Amendment to License SNM-1773), ALAB-528, 9 NRC \_\_\_\_\_, slip op. at 10 (February 26, 1979).\* To the extent that MCSD is seeking to claim standing on the basis of potential injury to itself as an organization, it must supply the requisite authorization that it desires to intervene in this proceeding, and for Dr. Voninski (or whatever MCSD member or attorney it chooses) to represent it in this proceeding. The Staff assumes that this may have already been accomplished by a school board resolution or other formal vote. If so, the defect in the Petition could easily be cured by simply submitting such MCSD authorization to the Licensing Board as an amendment to the Petition.

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\*/ The Staff notes that, even if the standard announced in the Duke Power Co. proceeding (supra) were applied to this proceeding, the requirements of § 2.714 regarding authorization by a group for a member to represent it in an NRC licensing proceeding would not be met by the Petition. Although Dr. Voninski may be a high-ranking official of MCSD, there is no indication where he lives or works, and thus, whether he has a personal interest that may be affected by this proceeding. Although Dr. Voninski is an officer of the school board, that in itself does not ensure that he also works any appreciable amount of time in the vicinity of Mexico, nor that he lives nearby.

In light of the fact that the Staff finds that MCSD has satisfactorily shown that, as an organization, it has the necessary interest to be admitted in this proceeding as a matter of right, there is no need for the Staff to discuss whether MCSD should be admitted on a discretionary basis.

### III. ASPECTS OF THE PROCEEDING

In addition to the "interest" requirement of 10 CFR § 2.714 a petition must also set forth with particularity the specific aspect or aspects of the subject matter of the proceeding to which a petitioner wishes to intervene. The Petition contains specific aspects, and the Staff believes that the specification provided is adequate to satisfy the requirements of 10 CFR § 2.714.

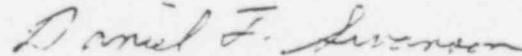
Not later than fifteen (15) days prior to the special prehearing conference held pursuant to 10 CFR § 2.714(a), or prior to the first prehearing conference where no special prehearing conference is held, a petitioner must supplement his petition to include a list of the contentions which a petitioner seeks to have litigated in the proceeding. The Staff submits that MCSD could, at the same time, cure the defect in its Petition by supplying the authorization for Dr. Voninski to represent it in this proceeding.

In view of our position that Petitioner has conditionally satisfied the "interest requirement" of 10 CFR § 2.714, the Staff will make an effort, consistent with the Commission's views as stated in the Statement of Consideration accompanying the recent amendment to 10 CFR § 2.714, 43 F. d. Reg. 17798, to meet with Petitioner in an attempt to arrive at a stipulation of contentions to be submitted to the Board.

IV. CONCLUSION

For the foregoing reasons, the NRC Staff believes that MCSD has satisfied the requirements of 10 CFR § 2.714 with respect to "interest" and the specification of aspects of the proceeding, with the exception that it has not provided authorization for Dr. Voninski to represent in in this proceeding. As to this last matter, the Staff submits that MCSD should provide the requisite authorization in a supplement to its Petition.

Respectfully submitted,



Daniel T. Swanson  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 29th day of March, 1979