

UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION



In the Matter of	)	
GENERAL ELECTRIC COMPANY	)	Docket No. 50-70
(Vallecitos Nuclear Center -	)	Operating License
General Electric Test Reactor)	)	No. TR-1
	)	(Show Cause)

GENERAL ELECTRIC'S RESPONSE  
 TO THE LICENSING BOARD'S  
 ORDER DATED JUNE 18, 1979

In accordance with the request contained in the Licensing Board's Order dated June 18, 1979, General Electric Company (GE), the licensee in the above-captioned proceeding, hereby submits the following response to the three questions raised by the Board in that Order:

1. Does Intervenor Dellums Have "Standing," As That Concept Is Employed In NRC Licensing Proceedings, To Participate In This Case By Virtue Of His Status As A Congressman?

GE believes that Intervenor Dellums does not have "standing" to participate in this proceeding by virtue of his status as a Congressman. As the Atomic Safety and Licensing Appeal Board recently noted in Nuclear Engineering Co. (Sheffield Waste Disposal Site), ALAB-473, 7 NRC 737, 739-40 (1978) with respect to standing in NRC licensing proceedings:

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It is now settled that . . . contemporaneous judicial concepts of standing are to be applied. More specifically, it must appear from the petition both (1) that the petitioner will or might be injured in fact by one or more of the possible outcomes of the proceeding; and (2) that the asserted interest of the petitioner in achieving the particular result is at least arguably within the 'zone of interests' protected or regulated by the statutes being enforced. (emphasis added).

The key issue with respect to Intervenor Dellums' participation in this proceeding by virtue of his status as a congressman is whether or not he can meet the "injury in fact" test. In order to do so, Congressman Dellums would have to demonstrate that, as a congressman, he has such a "cognizable interest" in the outcome of this proceeding that he might be adversely affected as a congressman if the proceeding has one outcome rather than another. Nuclear Engineering Co. (Sheffield), 7 NRC at 743. However, the "injury in fact" test will not be satisfied if his "asserted harm is a generalized grievance shared in substantially equal measure by all or a large class of citizens." See Low Enriched Uranium Exports to EURATOM Member Nations, CLI-77-24, 6 NRC 525, 531 (1977) and cases cited therein.

Over the past several years, a number of congressmen have sought to bring suit or intervene in suits by virtue of their status as congressmen. The courts have regularly and routinely denied standing to these members of Congress as a

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result of their failure to meet the "injury in fact" test. Metcalf v. National Petroleum Council, 553 F.2d 176 (D.C. Cir. 1977); Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977); Reuss v. Balles, 584 F.2d 461 (D.C. Cir. 1978); Edwards v. Carter, 445 F. Supp. 1279 (D.D.C. 1978); Metzenbaum v. Brown, 448 F. Supp. 538 (D.D.C. 1978). <sup>1/</sup>

Congressman Dellums has not alleged that he will incur any particular injury as a congressman as a result of this proceeding which goes beyond a "generalized grievance shared in substantially equal measure by a large class of citizens." As the United States Court of Appeals for the District of Columbia Circuit concluded in the Harrington case

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1) Kennedy v. Sampson, 511 F.2d 430 (D.C. Cir. 1974) is the only case that GE is aware of in which a legislator was able to meet the "injury in fact" test by virtue of his status as a member of Congress. This case involved a claim by Senator Kennedy that his vote on a particular bill had been "nullified" as a result of a "pocket veto" by the Executive. This case is clearly distinguishable on its facts from the situation which exists in this proceeding with respect to Congressman Dellums. There is no conceivable outcome of this proceeding which could in any way "nullify" his vote on any legislation.

If there is one concept to be gained from the Supreme Court decisions on standing, it is that a litigant, to have standing, must have a stake in the controversy at issue . . . . Appellant undoubtedly has interests in his status as a Congressman in the . . . general lawmaking powers of the Congress. He has not, however, alleged any 'concrete injury, whether actual or threatened, [which] is [the] indispensable element' of a claim for standing. 553 F.2d at 209-210 (emphasis in original)

As a result, the Court concluded that

Appellant's complaint about the administration of the [statute in question] becomes a 'generalized grievance about the conduct of government' which lacks the specificity to support a claim of standing. 553 F.2d at 214. See also Reuss v. Balles, 584 F.2d at 468. 2/

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2/ It should also be noted that Congressman Dellums was elected by the voters in his congressional district to represent them in the United States House of Representatives with respect to legislative matters. While congressmen often make inquiries to administrative agencies on behalf of individual constituents or groups of constituents when authorized or requested to do so by such constituents, Congressman Dellums has made no showing that he has been specifically authorized by a majority of the voters in his district to appear in a representative capacity on their behalf and espouse a particular position in the above-referenced adjudicatory proceeding before the NRC. The presumption against an individual legislative representative appearing in an official capacity in NRC proceedings is underscored by the Commission's recent order in Toledo Edison Co., et al. (Davis-Besse 1), Docket No. 50-346 (July 5, 1979) in which the Commission directed the Chairman of the Atomic Safety and Licensing Board Panel to select a board to determine whether Ohio State Senator Tim McCormack met the requisite "personal interest test" to satisfy NRC intervention requirements.

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GE believes that the type of interests which Congressman Dellums has in this proceeding as a congressman are similar, if not identical, to the types of interests of the congressmen in the cases cited above. These interests were insufficient to confer standing in the courts and must likewise be deemed insufficient to confer standing in an NRC licensing proceeding.

For all the foregoing reasons, GE submits that Intervenor Dellums does not have standing to participate in this proceeding by virtue of his status as a congressman. <sup>3/</sup>

2. Assuming That Congressman Dellums Has "Standing" As A Private Citizen, And Was Admitted To The Case On That Basis, Do The Points Raised By The Commission's General Counsel Have Relevance To The Congressman's Continued Participation In The Same Manner As Heretofore? What Relevance?

Assuming that Congressman Dellums is participating in this proceeding as a "private citizen," <sup>4/</sup> GE believes that he is required to either proceed pro se or be represented by an attorney-at-law. Section 2.713(a) of the Commission Rules of Practice stipulates that

3/ Since GE does not believe that Intervenor Dellums has standing as a congressman, GE will not address subpart (a) of Board Question No. 1 except to note that even if Intervenor Dellums did have standing as a Congressman, he would still be required to appear pro se or be represented by an attorney-at-law. His representation by anyone who is not an attorney-at-law would appear to be precluded by 10 C.F.R. § 2.713(a).

4/ GE's original position in regard to the admission of Congressman Dellums was predicated on the understanding that he was admitted as an individual on the basis of his personal interest, and not admitted in a representative capacity (Tr. 22). The NRC Staff's position was the same (Tr. 22).

A person may appear in an adjudication on his own behalf or by an attorney-at-law in good standing admitted to practice before any court of the United States, the District of Columbia or the highest court of any State, territory, or possession of the United States.  
10 C.F.R. § 2.713(a).

Under Section 2.713(a), a person intervening as a "private citizen" in an NRC licensing proceeding may not be represented by a non-attorney. See e.g., Metropolitan Edison Co., et al. (Three Mile Island 2), ALAB-474, 7 NRC 746, 748 (1978); Duke Power Co. (Cherokee 1, 2, and 3), ALAB-440, 6 NRC 642, 643 at n. 3 (1977); Cincinnati Gas & Electric Co. (Zimmer), Docket No. 50-358 (Order dated June 14, 1979). Therefore, to the extent that Mr. Dellums has been participating in this proceeding in contravention of the requirements of section 2.713(a) of the Rules of Practice, the Board should not permit him to continue to do so.

While the other issues raised by the Commission's General Counsel in its letter dated May 18, 1978 to the Chairman of the Licensing Board may have a bearing on the wisdom of the congressman continuing his participation in this proceeding as he had in the past, GE believes that these issues go beyond the scope of this proceeding. This Board is tasked with resolving the three specific issues identified in the Commission's Show Cause Order and regulating the course of this

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proceeding pursuant to 10 C.F.R. § 2.718. The Board can do so by ruling on the first question presented in its July 18 Order and assuring that the requirements of 10 C.F.R. § 2.713(a) are met during the future course of this proceeding.

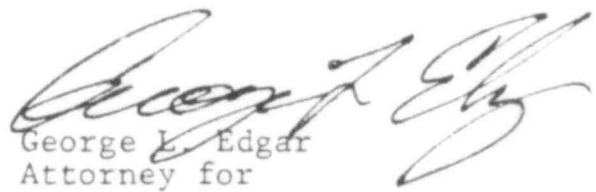
3. Should The Licensing Board Attempt To Determine The Matter Itself, Or Is The Case An Appropriate One For Referral To The Department Of Justice For Investigation As Involving A Possible Violation Of Federal Criminal Law?
    - a. If Such Referral Is Believed To Be Appropriate, Should The Referral Be Made By The Licensing Board, The Office Of The General Counsel, Or By Some Other Body Within NRC?
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As indicated above, GE believes that the Board should issue a ruling on Question No. 1 and assure that the requirements of 10 C.F.R. §. 2.713(a) are met. GE can provide no assistance with respect to the question of whether or not any of the other aspects of this matter are appropriate for referral to the Department of Justice, since GE has no expertise in this area. However, GE does not believe that it would be appropriate for the Board itself to make a direct referral to the Justice Department. The Office of the General Counsel of the Commission is tasked with providing "legal advice and assistance to the Commission and Commission offices with respect to all activities of the NRC" as well as representing the NRC in "dealings with other government agencies." 10 C.F.R. § 1.32(a).

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Accordingly, GE believes that the Board should refer any additional questions which it might have with respect to this matter to the Office of the General Counsel for further evaluation and possible referral to the Department of Justice if that office determines that such action is warranted.

Respectfully submitted,

  
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Dated: July 13, 1979



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served as of this date by personal delivery or first class mail, postage prepaid, to the following:

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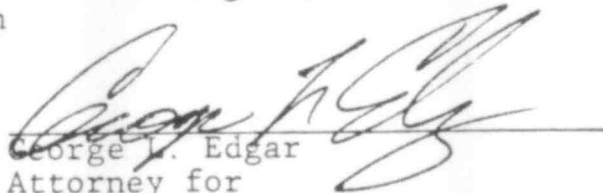
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