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NRG PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
GENERAL ELECTRIC COMPANY
(GE Morris Operation Spent Fuel
Storage Facility)

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) Docket No. 70-1308
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NRC STAFF'S RESPONSE TO PETITION FOR LEAVE TO
INTERVENE JOINTLY FILED BY ROREM, ET AL. AND APPLESEED

On April 25, 1979, the Nuclear Regulatory Commission (Commission) published in the Federal Register (44 Fed. Reg. 24354) a notice indicating that it was considering an application for renewal of Materials License No. SNM1265 issued to the General Electric Company for the GE Morris Operation fuel storage facility. The notice provided that any person whose interest may be affected by this action could file a request for a hearing in the form of a petition for leave to intervene in accordance with the provisions of 10 CFR §2.714. The notice further provided that such petitions must be filed by May 25, 1979. Pursuant to the notice, certain individuals - Bridget Little Rorem, Ralph Rorem, Jr., Keith Storey, and Everett Quigley - and an unincorporated organization, Appleseed, jointly filed a timely petition for leave to intervene. The NRC Staff response to the petition is set forth below.

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I. INTEREST

In accordance with 10 CFR §2.714 and the notice, persons seeking to intervene must show with particularity their interest in the proceeding and how that interest may be affected by the results of the proceeding. 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).

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); Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2) ALAB-397, 5 NRC 1143, 1144-1145. Consequently, a petitioner must show "injury in fact" and that such interest is "'arguably within the zone of interest' protected by the statute." Pebble Springs, supra. The individual Petitioners in this case seeks to establish their interest by alleging that they all live and work within approximately 30 miles of the Morris Operation facility and that the renewal of the license "will affect their property values and job opportunities" (Petition, p.2). It has long been held that residence within close proximity to the facility is sufficient to show the requisite interest. See Gulf States Utilities Company (River Bend Station, Units 1 & 2), ALAB-183, 7 AEC 222, 223-24 (1974); Louisiana Power & Light Co. (Waterford Steam Electric

Station, Unit 3), ALAB-125, 6 AEC 371, 372, n.6 (1973). Accordingly, the NRC Staff believes that the individual Petitioners have established the requisite interest by living and working within 30 miles from the facility.

An organization can establish standing through members of the organization who have interests which may be affected.^{1/} Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 1), 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 with interest, 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 or her behalf. Edlow International Company (Agent for the Government of India on Application to Export Special Nuclear Material) CLI-76-6, 3 NRC 561, 574 (1976). Allied General Nuclear Services et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976). An organization may satisfy the requirements of 10 CFR §2.714 by showing that the residence of one of its members is "within the geographical zone that might be affected by an accidental release of fission products". Waterford, supra. In fact, the Appeal Board has recently held that geographic proximity of a member's residence to a

^{1/} In light of Appleseed's apparent intention to intervene in a representative capacity on behalf of individual members, the question of whether it has shown sufficient "institutional" interest need not be reached. Edlow International Company (Agent for the Government of India on Application to Export Special Nuclear Material) CLI-76-6, 3 NRC 561, 573-574 (1976).

facility is deemed enough, standing alone, to establish the interest requirements of 10 CFR §2.714. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 55 (January 26, 1979). Although no specific distance from a nuclear power plant has evolved from Commission decisions to define the outer boundary of the "geographic zone of interest", distances up to about 50 miles have been found not to be so great as to preclude a finding of standing based on residence. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2) ALAB-413, 5 NRC 1418, 1422 n.4 (1977).

The organization Appleseed attempts to establish its interest by alleging that nearly all of its members live within 50 miles of the facility and that 95% live within 30 miles. However, the only members of Appleseed which have been identified are the abovenamed individual petitioners. In addition, there is no authorization from Appleseed which indicates that (1) these abovenamed individuals who signed the petition to intervene are authorized to act on behalf of Appleseed, and (2) Appleseed is acting on behalf of its members when it undertakes this intervention action.

As noted above, the individual Petitioners appear to live and work within the "geographic zone of interest" and therefore may be found to constitute "affected members" of Appleseed. While it may be implied from the fact that each individual Petitioner has signed the petition, that each of those members has authorized the organization to act on his or her behalf, c.f.

Duke Power Company (Amendment to Materials License SNM-1773--Transportation of Spent Fuel from Oconee Nuclear Station for Storage of McGuire Nuclear Station) ALAB-528, ___ NRC ___, slip. op. at 10, February 26, 1979, the Staff believes it would be desirable for the affected members of Appleseed to file an explicit statement that they wish the organization to represent their interests. Further, it is well established that where an organization is to be represented by one of its members, the member must also demonstrate authorization by that organization to represent it. Tennessee Valley Authority, supra at 1421; Detroit Edison Company et al (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575, 583 (1978). With regard to the individual Petitioners, there is no information provided in the petition as to whether any is an official of Appleseed or has been authorized by Appleseed to represent it. As a result of these deficiencies, the petition of Appleseed has failed to meet the requirements of 10 CFR §2.714 and the relevant case law as to standing as of right and, therefore, is opposed at this time by the Staff.

Even though Appleseed may not be entitled to intervene as a matter of right, the Board could grant its petition for intervention as a matter of discretion based on the Board's consideration of the factors set forth in 10 CFR §2.714(a) and (d). Pebble Springs, supra, at 616. The Appeal Board has indicated that the foremost factor among these factors is whether the petitioner will make a valuable contribution to the Board's decisionmaking process Watts Bar, supra, at 1422. There is no information provided in

the petition as to any of the factors and therefore, no basis for finding that Appleaseed should be granted intervenor status as a matter of discretion.

In sum, for the reasons stated above, the Staff does not believe that Appleaseed has met the requirements for intervenor status either as a matter of right or as a matter of discretion. The Staff recognizes that Appleaseed may freely amend its petition to correct the noted deficiencies until 15 days prior to the special prehearing conference which will be scheduled in this proceeding. 10 CFR §2.714(a)(3).

II. IDENTIFICATION OF SPECIFIC ASPECTS

A petition for leave to intervene should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. This petition has listed nine (9) contentions with which joint Petitioners wish to intervene. Although at this time it appears that none of the contentions listed have the requisite specificity and basis to allow them to be admitted in this proceeding as issues in controversy, the Staff believes they do set forth a reasonable identification of the specific aspects of the subject matter as to which intervention is sought.

III. CONTENTIONS

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. In light of the NRC Staff's belief that the individual Petitioners have satisfied the "interest" requirements of 10 CFR §2.714, we will attempt to meet with them in the near future in order to discuss the contentions in which they wish to participate in this proceeding with the possible result that an agreement can be reached among the parties and the individual Petitioners as to a revised statement of contentions and a stipulation submitted to the Licensing Board. This procedure is consistent with the Commission's views stated in the Statement of Consideration issued in connection with the amendment of 10 CFR §2.714. 43 Fed. Reg. 17798 (April 26, 1978).

IV. CONCLUSION

For the reasons set forth above, the NRC Staff submits that the named individual Petitioners have satisfied the requirements of 10 CFR §2.714 pertinent to "interest" but the organization Appleaseed has not. Further, the Staff submits that the joint petition has reasonably identified the specific "aspects of the proceeding" as to which intervention is sought.

Respectfully submitted,

Smart A Treby
For Richard L. Black
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 14th day of June, 1979.