

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of)
)
OMAHA PUBLIC POWER DISTRICT) Docket No. 50-285
(Fort Calhoun Station, Unit)
No. 1))

APPLICANT'S CONSOLIDATED ANSWER TO REQUESTS FOR
HEARING FILED BY NATURAL RESOURCES COMMITTEE
AND ALAN H. KIRSHEN

Introduction

On July 17, 1979, Omaha Public Power District ("Applicant") filed an Application for Amendment of Operating License to increase the thermal power level of Fort Calhoun Station, Unit No. 1, from 1420 Mwt to 1500 Mwt ("Stretch Application"). Notice of opportunity for requests for hearing on the Stretch Application was published by the Nuclear Regulatory Commission ("Commission") in the Federal Register on September 7, 1979. 44 Fed. Reg. 52,389 (1979). The notice stated that "any person whose interest may be affected by this proceeding" could file a request for a hearing in the form of a petition for leave to intervene. The notice further provided that any such request must be filed by October 9, 1979.

As counsel for Applicant, we received on October 11, 1979, copies of requests for hearing in this proceeding filed by the Natural Resources Committee of the Citizens

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Advisory Board of the Metropolitan Area Planning Agency
("the Committee") and Mr. Alan H. Kirshen.

In Applicant's view, neither the Committee's request nor the Kirshen request sets forth with particularity, as required by 10 C.F.R. §2.714(a)(2), the interest of petitioners in the proceeding. Similarly, neither request explains how that interest might be affected by the results of the proceeding. Pursuant to 10 C.F.R. §2.714(c), Applicant submits herewith its answer to each of the above-identified requests. In sum, Applicants submit that the requests for hearing be denied because neither request establishes that intervention should be granted either as a matter of right or as a matter of discretion.

Argument

I.

THE COMMITTEE'S REQUEST FAILS TO SATISFY THE REQUIREMENTS
FOR INTERVENTION EITHER AS OF RIGHT OR DISCRETION
AND SHOULD THEREFORE BE DENIED.

A. Intervention as a Matter of Right.

As stated in the September 7, 1979 Federal Register Notice, the Committee's request for hearing is subject to review of the following factors:

1. The nature of the petitioner's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding;

2. The nature and extent of the petitioner's property, financial, or other interest in the proceeding, and

3. The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

10 C.F.R. §2.714(d).

These prerequisites to intervention apply to both individuals and organizations requesting a hearing. In the case of an organization, the interests of the individual members must be identified, and, in addition, must be shown to be placed in jeopardy by the outcome of the proceeding. Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422-23 (1976). Additionally, the individual member whose interests are in question must be identified. Omaha Public Power District (Fort Calhoun Station, Unit No. 1), CLI-72-24, 5 AEC 9 (1972); Barnwell, supra; Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328 (1976); Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487 (1973). Lastly, a showing must be made by those individuals that the organization is, in fact, properly authorized to represent them. Barnwell, supra. As set forth below, the Committee's request fails to meet these requirements and should be rejected.

Specifically, the Committee has not identified any property or financial interests of its members. The Committee has neither "particularized" any of these interests alleged to be possessed by its members nor provided any "concrete demonstration" of how these as yet unpleaded specific interests would be affected by the results of this proceeding. See Nuclear Engineering Co., Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 741, 743 (1978).^{1/}

The Committee has also failed to identify its specific members whose interests it is now seeking to represent. The only member identified is Mr. Alar H. Kirshen whose residential address and interest are not given. An organization must identify at least one member by name and address who wishes to be represented by the organization and who has the necessary interest. Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC ____ (1979); Detroit Edison Co. (Enrico Fermi Atomic

^{1/} Applicant denies that it ever represented that any matters raised by the Committee in its request for a hearing to the Nebraska Department of Environmental Control ("DEC") would be better addressed in the context of this proceeding. Committee Request #2. Rather it was the director of DEC in a letter to the chairman of the Committee who related that the Committee's concerns were more appropriately addressed within the NRC's review not the DEC. Letter from Dan T. Drain to Maryjean Lyon, dated August 15, 1979, copy attached as Exhibit A. Applicant has no knowledge of any specific concerns of the Committee and is, therefore, unable to determine the appropriate context for their consideration.

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Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979). The Committee has similarly failed to provide any indication whatsoever that its individual members do, indeed, desire that organization to represent them.

The Committee has failed to specify and to document its legal authority to participate in this proceeding. As an advisory body to the Metropolitan Area Planning Agency ("MAPA"), a council of public officials, it is not apparent what authority, if any, the Committee has to act independently of MAPA in matters in which it is to have a merely advisory role to MAPA. The Committee avers that it may provide "review and comment independent of official MAPA action or position". Committee Request #1. This indicates that the Committee may be requesting a hearing without the knowledge and approval of the body that appointed it. The Committee should be required to produce written authorization from MAPA before its hearing request is considered further.

Normally, the interests of an organization and its members may be discerned from the contentions it seeks to litigate. Here, no specific contentions are proffered by the Committee. More important, it appears that Mr. Kirshen, representing the Committee, has publicly stated that the Committee has no specific contentions. See Omaha

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World-Herald, Oct. 14, 1979, at 17B, copy attached as Exhibit B.

Rather than identifying its members and specifying their interests, the Committee has requested the hearing for any and all "citizens who could be adversely affected in the event of an accident at the facility, perhaps occasioned by the modifications sought in this proceeding, or by increased thermal discharges which will result from the modifications herein sought." Committee Request

¶3. The Committee does not state whether such citizens are members of the Committee. If they are not, whatever interests such citizens may have in this proceeding cannot be relied upon by the Committee to compensate for its lack of interest in this proceeding. See, Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 343 (1977); Sierra Club v. Morton, 405 U.S. 727 (1972). The Committee may not represent persons other than its members without express authority to do so. The Committee has not produced such authority. Long Island Lighting Co. (Shoreham Nuclear Power Station Unit 1), LBP-77-11, 5 NRC 481, 483 (1977). An organization's "interest in a problem" without a showing that a member would be adversely affected is not enough. Id.; Barnwell, supra, at 21. The Committee has only stated the "generalized grievance of all citizens

which is insufficient to support the Committee's request. Edlow International Co. (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 NRC 563, 576 (1976).

B. Intervention as a Matter of Discretion.

Even though a prospective intervenor may not be entitled to intervene in a proceeding as a matter of right, a Licensing Board may grant intervention as a matter of discretion. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). However, the inquiry as to whether discretionary intervention should be granted in this case must focus on one "pivotal factor"--"the ability of the petitioner to make a valuable contribution to the development of a sound record." Public Service Company of Oklahoma (Black Fox, Units 1 and 2), LBP-77-17, 5 NRC 657 (1977), aff'd as to this point, ALAB-397, 5 NRC 1143, 1151 n.14 (1977). The Committee has failed to demonstrate its ability or even its intention to make a valuable contribution to the record in this proceeding. This ability cannot be presumed. The Committee has merely requested a hearing to allow unnamed citizens to participate. It is not clear what role, if any, the Committee would be able or willing to assume at a hearing. Moreover, the Committee's request cannot be granted just

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because it does not appear that the Committee will not be able to make such a contribution. The "burden will be on [the Committee] to satisfy the Licensing Board on these points." Sheffield, supra at 745.

Discretionary intervention in this proceeding should be allowed only upon an unusually strong showing that the Committee would make a substantial contribution since otherwise there will be no hearing. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 (1977). In addition to specifying those issues on which it plans to participate, the Committee "must specify the extent to which it will involve itself on those issues and the contribution which that involvement can reasonably be anticipated to make." Sheffield, supra, at 745. The Committee has not even stated whether it would become involved in the hearing but appears to request it for the benefit of any citizen who may wish to participate. In Exhibit B, the chairman of the Committee, Mr. Kirshen, has stated that the Committee would not testify for or against the amendment. The Committee has failed to put forward sufficient information warranting the award of intervention pursuant to an exercise of the Commission's discretion.

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II.

ALAN H. KIRSHEN'S REQUEST FAILS TO SATISFY
THE REQUIREMENTS FOR INTERVENTION EITHER
AS OF RIGHT OR DISCRETION AND SHOULD THEREFORE BE DENIED.

Alan H. Kirshen's individual request merely references the Committee's request and thus does not provide any information as to Mr. Kirshen's individual interest in the proceeding nor any specific issues within the scope of the proceeding which would affect any pertinent interest of Mr. Kirshen as required by §2.714(a). The only interests identified in the Committee's request which the Kirshen request incorporates by reference are the generalized interests of each citizen which are insufficient for intervention as of right. Edlow International, supra.

Mr. Kirshen's failure to identify any interest in the proceeding or valid contentions affecting any such interest and to describe his possible contribution to the proceeding will not support a grant of discretionary intervention. "Certainly, before a hearing is triggered at the instance of one who has not alleged any cognizable personal interest in the operation of the facility, there should be cause to believe that some discernible public interest will be served by the hearing." Watts Bar, supra. Mr. Kirshen has not provided any information to suggest he is qualified by either specialized education or pertinent experience to

make a substantial contribution to the proceeding. An award of discretionary intervention to Mr. Kirshen is therefore unjustified and inappropriate.

Conclusion

For the foregoing reasons, Applicant requests that the hearing requests of the Committee and Alan H. Kirshen be denied.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE

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Attorneys for Applicant

Of Counsel:

MARGARET R. A. PARADIS

October 23, 1979

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Nebraska Department of Environmental Control

Charles Thone, Governor

Dan T. Drain, Director

August 15, 1979

WPC-Perm/Enfc

Ms. Maryjean Lyon, Chairman
 CAB Natural Resources Committee
 Omaha-Council Bluffs
 Metropolitan Area Planning Agency
 Suite 200
 7000 West Center Road
 Omaha, Nebraska 68106

RE: Omaha Public Power District - Fort Calhoun
 NPDES Permit No. NE 0000418
 Public Notice Dated July 5, 1979

Dear Ms. Lyon:

We are in receipt of your request for a public hearing on the modification to the NPDES permit for Fort Calhoun Station of the Omaha Public Power District.

The purpose of the NPDES modification as proposed is to allow the plant to operate under the concept of stretch power. The decision on Omaha Public Power District's application for increased power production will be made by the Nuclear Regulatory Commission.

We have reviewed the projected impact of the increased temperature on the Missouri River and feel the effect will be minimal and will comply with Nebraska's Water Quality Standards. Normally, the maximum temperature is approached only during those few days in the summer when peak power is needed, which coincides with high flow rates in the Missouri River. Additionally, by allowing a slightly increased discharge temperature, the corresponding cooling water flow rate can remain constant, thus avoiding the more serious environmental effect of impingement and entrainment of fish and fish larvae at the cooling water intake point.

After reviewing your comments it appears that the more appropriate vehicle to address your concerns is the public notice that will be issued by the Nuclear Regulatory Commission (NRC) on Omaha Public Power District's application for stretch power. It is our intent to defer any action on this issuance of the modification since approval by NRC of the operational change is a condition precedent to our modifying the NPDES permit with regard to temperature.

We would like to thank you for your interest in Nebraska's water and the concerns expressed in your comments.

Very truly yours,

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Dan T. Drain
 Director

bcc: NRC

OMAHA WORLD HERALD - OCTOBER 14, 1979
AT 17B

NRC Hearing Sought On Hike in N-Power

The Nuclear Regulatory Commission has been asked to hold a public hearing on the Omaha Public Power District's application to increase the power output at the Fort Calhoun nuclear plant.

The request was made by the natural resources committee of the Metropolitan Area Planning Agency citizens' advisory board.

Alan H. Kirshen, chairman of the committee, said his group believes a hearing would be in the public interest. "We wouldn't testify for or against the proposal," he said. Instead, he said, the committee probably would raise some questions it believes need to be raised.

Earlier this year, OPPD announced an agreement with Exxon Nuclear Fuel Co. that is aimed at boosting the capability of the Fort Calhoun unit to 490,000 kilowatts from 457,000 kilowatts.

Exxon would manufacture fuel assemblies that would

enable the power to be increased. OPPD would pay the company about \$900,000 a year.

OPPD officials said the additional power would replace power produced at higher cost by OPPD's coal-fired plants, would occasionally provide the district with power to sell at a profit, and would reduce the number of times the plant needs to be shut down for refueling, thus also reducing the dependence on coal during shutdown periods.

In its request, the MAPA group said the public interest requires a hearing "in which citizens who could be adversely affected in the event of an accident at the facility . . . or by increased thermal discharges" can be heard.

Kirshen also said that although he was "normally a proponent of nuclear power," he thought that OPPD had done "a very poor job of permitting or facilitating public involvement or participation" in its request.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a document entitled, "Applicant's Consolidated Answer to Requests for Hearing Filed by Natural Resources Committee and Alan H. Kirshen," by mailing a copy thereof first class, postage prepaid, or by personal delivery, as so indicated, to the following persons:

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October 23, 1979

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