

NRC PUBLIC  
UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Board

In the Matter of )  
GULF STATES UTILITIES COMPANY )  
(Blue Hills Station, Units 1 & 2) )

Docket Nos. STN 50-510  
STN 50-511

ORDER DENYING PETITION FOR LEAVE TO INTERVENE  
(December 27, 1978)

On May 12, 1978, a Notice of Hearing was published on the application for early site review regarding the Blue Hills Station, Units 1 and 2 (43 Fed. Reg. 20,572). This notice stated that petitions for leave to intervene must be filed by June 12, 1978.

On November 1, 1978, the Secretary of the Commission received an undated petition for leave to intervene from:

"D. Michael McCaughan  
Member  
The Environmental Task Force  
3131 Timmons Lane, Apt. 254  
Houston, TX. 77027"

This untimely petition consisted of a cover page requesting late intervention on the basis of 22 contentions. All of these contentions pertained to the operation of a nuclear plant, but none related to the site review involved in this proceeding.

To meet the requirements of 10 CFR Section 2.714(a)(2), a petition for intervention must set forth with particularity "the interest of the

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petitioner in the proceeding, how that interest may be affected by the results of the proceeding . . . and the specific aspect or aspects of the proceeding as to which petitioner wishes to intervene." In this case, the Petitioner has not set forth any interest whatsoever, nor has he indicated how the proposed site permit could affect any interest he might have. The City of Houston, Texas (apparently the Petitioner's residence), is approximately 140 miles from the Blue Hills proposed site. Distances of 125 miles or more between plant site and residence have been held to be too remote to constitute an adequate geographic zone of interest for intervention purposes.<sup>1/</sup> The Petitioner has failed to show standing to intervene as of right according to traditional legal principles.

In addition to standing as a matter of right, the Commission has determined that discretionary intervention may be permitted in some circumstances where judicial standing is lacking. In Portland General Electric Company (Pebble Springs, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976), the guidelines for the exercise of such discretion were thus described:

"In determining in a particular case whether or not to permit intervention by petitioners who do not meet the tests for intervention as a matter of right, adjudicatory boards should exercise their discretion based on an assessment of all the facts and circumstances of the particular case. Some factors bearing on the exercise of this discretion are suggested by our regulations, notably those governing the

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<sup>1/</sup> Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1150 (1977); Duquesne Light Company (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 244 (1973).

analogous case where the petition for intervention has been filed late, 10 CFR 2.714(a), but also the factors set forth in 10 CFR 2.714(d) governing intervention generally:

- (a) Weighing in favor of allowing intervention--
  - (1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
  - (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
  - (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.
- (b) Weighing against allowing intervention--
  - (4) The availability of other means whereby petitioner's interest will be protected.
  - (5) The extent to which the petitioner's interest will be represented by existing parties.
  - (6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding."

As the Commission summed it up, "permission to intervene should prove more readily available where petitioners show significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, set forth these matters with suitable specificity to allow evaluation, and demonstrate their importance and immediacy, justifying the time necessary to consider them." (Id., at 617)

The Appeal Board has also observed that in weighing the factors bearing upon discretionary intervention, "foremost among them is whether the petitioner's 'participation would likely produce a valuable contribution . . . to our decision-making process.' Indeed, 'in the vast majority of instances the pivotal factor in determining whether to grant

discretionary intervention will be that of the ability of the petitioner to make a valuable contribution to the development of a sound record on a safety or environmental issue which is raised by him and appears to be of enough importance to call for Board consideration.' "<sup>2/</sup>

The instant petition for intervention is completely silent as to the reason for its untimeliness, and does not attempt to make a substantial showing of good cause for the failure to file on time (i.e., June 12, 1978). The petition also fails to address any of the other factors which are to be balanced together with a showing of good cause for failure to file on time, as required by 10 CFR 2.714(a)(1)(i-v). In this connection, the Commission has stressed that "late petitioners properly have a substantial burden in justifying their tardiness. And the burden of justifying intervention on the basis of the other factors in the rule is considerably greater where the latecomer has no good cause."<sup>3/</sup>

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<sup>2/</sup> Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1422 (1977). See also Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631, 633 (1976); Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1145 (1977).

<sup>3/</sup> Nuclear Fuel Services, Inc., et al. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 275 (1975). See also Metropolitan Edison Company, et al. (Three Mile Island Nuclear Station, Unit 2), ALAB-384, 5 NRC 612, 615 (1977); Duke Power Company (Cherokee Nuclear Station, Units 1, 2 and 3), ALAB-440, 6 NRC 642, 643 (1977).

The petition must be denied for its failure to show standing to intervene, and its lack of justification for untimely filing. Under the provisions of 10 CFR 2.714 a , an order wholly denying a petition for leave to intervene is appealable by the petitioner on the question whether the petition should have been granted in whole or in part. This Order may be appealed to the Atomic Safety and Licensing Appeal Board within ten (10) days after service of this Order. The appeal shall be asserted by the filing of a notice of appeal and accompanying supporting brief. Any other party may file a brief in support of or in opposition to the appeal within ten (10) days after service of the appeal.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY  
AND LICENSING BOARD

*Marshall E. Miller*  
Marshall E. Miller, Chairman

Dated at Bethesda, Maryland  
this 27th day of December 1978.