

for hearing. Mentor claims that those issues are its principal concerns, that its participation will therefore not broaden the scope of the proceeding, but that instead its participation should add depth to our consideration of those issues.

The Applicants' objections to Mentor's participation stem from the City's designation as its representative in this proceeding of a Mrs. Mary Reder of California, Kentucky. The Applicants claim that Mrs. Reder is neither an attorney nor a resident of Mentor and hence, under 10 CFR §2.713(a), cannot represent the City. Moreover, they claim that Mentor is not the real party in interest, that Mrs. Reder is head of an organization denominated as the Zimmer Area Citizens of Kentucky (ZACK) ("an organization opposed to the licensing of the Zimmer Station"), and hence that ZACK is using Mentor as a "front" to avoid the responsibilities which would rest upon it if ZACK were admitted as a named intervenor. The Applicants would require that, if Mentor be admitted, it be represented by either an elected official or through counsel. On the other hand, the Staff claims that there is no restriction in 10 CFR §2.715 as to whom a government agency may designate to represent it.

In ruling upon Mentor's petition, we must differentiate between the qualification of the City to participate and that of its designated representative to appear as such. The City's petition is signed both by the Mayor and the Secretary of its City Council. Nothing of which we have been made aware suggests

that those signatures are not legitimate or that the City does not wish to participate pursuant to 10 CFR §2.715(c). Moreover, as the Staff points out, there is no explicit time requirement regarding a filing to participate pursuant to 10 CFR §2.715(c). See our Memorandum and Order Admitting New Contentions, LBP-79-22, 10 NRC 213, 216 (August 7, 1979). That being so, the City of Mentor's petition is granted.

As for the City's representative, we will presume — although we do not definitively know — that Mrs. Reder is not an attorney. In any event, the requisite Notice of Appearance which must be filed by attorneys (see 10 CFR §2.713(a)) has not been submitted. Furthermore, although Mrs. Reder's mailing address is in California, Kentucky, we take official notice that California is in Campbell County, not more than two or three miles from Mentor. We agree with the Staff, however, that there is no restriction in 10 CFR §2.715(c) upon whom a governmental agency may designate to represent it.

The restrictions of 10 CFR §2.713 would limit representation to an attorney, to the party itself (pro se), or to a member of a group seeking to intervene. General Electric Co. (General Electric Test Reactor, Vallecitos Nuclear Center), LBP-79-28, 10 NRC ____ (October 9, 1979). As construed by the Applicants, those restrictions would limit representation of a governmental

body to counsel or elected members.^{1/} The net result would appear to us to restrict severely the manner in which a governmental body may carry on its functions, for it would preclude representation by an appointed official who is not an attorney — even the appointed head of a department with specific expertise in the matters at issue in a proceeding. In practical effect, governmental bodies would be restricted to representation by counsel and hence would be more limited in their choice of a representative than would many of the rather diffuse groups which routinely participate in NRC proceedings. Such a result was not contemplated by 10 CFR §2.715(c) which, in our view, was intended to encourage the participation of governmental bodies by abrogating some of the technical requirements applicable to other types of intervention.^{2/} In that connection, insofar as we are aware, the rights conferred by §2.715(c) have never

^{1/} Contrary to the claim of the Applicants, the Marble Hill opinion which they cite does not stand for the proposition that a private intervenor cannot represent a governmental entity. The question there was whether another party could be deemed adequately to protect the interest of a governmental entity, within the meaning of 10 CFR §2.714(a)(1)(iv), and the decision held that the private party would not necessarily do so. Therefore, representation of the governmental entity by a private party was found an inadequate substitute for the participation sought by that governmental body. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-339, 4 NRC 20, 25 (1976).

^{2/} In extending the "interested State" provision to other governmental entities, the Commission stated that its purpose was "to improve coordination with States, counties and municipalities." 43 Fed. Reg. 17798 (April 26, 1978).

been construed narrowly. See, e.g., Exxon Nuclear Co. (Nuclear Fuel Recovery and Recycling Center), ALAB-447, 6 NRC 873 (1977); Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392-94 (1976).

Moreover, we note that 10 CFR §2.715(c) is not written in terms of participation by municipalities or other governmental bodies but, rather, by "representatives" of such bodies or agencies thereof. There is no implication that those representatives are limited to those required for private parties under 10 CFR §2.713. For these reasons, we construe 10 CFR §2.715(c) as not being subject to the representation limits of 10 CFR §2.713(a).

In addition, we see no reason to conclude that the City of Mentor is merely a "front" for ZACK. The Mayor and City Council may share some of ZACK's views, but that does not mean the City should be precluded from advancing such views in its own regard. The nature of a City's views has never been — and should never be — a qualification for its participation. If the Mayor and City Council are misrepresenting the views of Mentor citizens, those citizens have a political remedy.

We recognize, of course, that the requirements for becoming a participant under 10 CFR §2.715(c) are less stringent than under 10 CFR §2.714. Nevertheless, in the present situation, we do not perceive that ZACK is attempting to avoid the requirements of 10 CFR §2.714, inasmuch as there are enough new developments with

respect to the standards governing evacuation and monitoring that it is possible that ZACK could gain admittance at this time in its own right (after a balancing of all of the factors in 10 CFR §2.714(a)). If it did, it of course could be represented by a group member such as Mrs. Reder.

Since Mrs. Reder will now be representing the City, we remind the City that it will be both bound by and responsible for her activities in this proceeding. Moreover, once admitted to the proceeding, Mentor's representative is required to adhere to procedural rules and requirements which govern other parties. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 768-69 (1977). As is the usual practice with respect to an intervention at an advanced stage of a proceeding, the City must take the proceeding as it finds it. Nuclear Fuel Services, Inc. (West Valley Reprocessing Plant), CLI-75-4, 1 NRC 273, 276 (1975).

This Order is subject to appeal pursuant to the terms of 10 CFR §2.714a.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD

Charles Bechhoefer
Charles Bechhoefer, Chairman

Dated at Bethesda, Maryland,
this 29th day of January, 1980.