

the spent fuel pool for Units 1 and 2 of that facility.^{1/}
In response to the notice, petitions for leave to intervene were filed by two organizations, Citizens' Energy Forum (CEF) and the Potomac Alliance (Potomac). In an unpublished order entered on December 19, 1978, the Licensing Board denied intervention to both organizations for want of a sufficient demonstration of an interest which might be affected by the proceeding.^{2/} See 10 CFR 2.714(a).^{3/} CEF and Potomac appeal under 10 CFR 2.714a. Their appeals are supported by the NRC staff and opposed by the licensee. We reverse.

1. CEF. As the Licensing Board acknowledged, the CEF petition asserted that four members of that organization (two couples) reside on the shore of Lake Anna in very close proximity to the North Anna facility. One of the four appeared at the special prehearing conference convened last September to consider the intervention petitions. She specifically confirmed that she had authorized CEF to represent her interest in the proceeding (Tr. 63). The nature of that interest was

^{1/} The latter unit is not yet in operation, but the notice indicated that the amendment would apply to it as well.

^{2/} The December 19 order replaced an earlier order (dated December 8, 1978) in which the Board had reached the same result.

^{3/} The Board further concluded that the grant of intervention as a matter of discretion was not warranted under the standards laid down by the Commission in Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27; 4 NRC 610 (1976). See also, e.g., Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1145 (1977).

outlined by her (Tr. 37-40). Among other things, she expressed concern that the expansion of the capacity of the spent fuel pool might bring about ground water contamination which, in turn, might affect a well located on her property.

This concern, and the others either expressed by her at the conference or to be found in the CEF petition as amended, may be devoid of any foundation in fact. But that is quite beside the point in evaluating the sufficiency of the asserted interest of the CEF members living little more than a stone's throw from the facility. Contrary to the Licensing Board's seeming belief, we have never required a petitioner in such geographical proximity to the facility in question to establish, as a precondition to intervention, that his concerns are well-founded in fact; i.e., in the words of the December 19 order (at p. 14), "to particularize a causal relationship between injury to an interest of petitioner and possible results of the proceeding."^{4/} Rather, close proximity has always been deemed to be enough, standing alone, to establish the requisite interest. See, e.g., Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 223-24 (1974), and cases there cited.

^{4/} By "particularize", the Licensing Board necessarily had in mind more than the mere averment of a causal relationship. As we have seen, CEF did specify at least one type of harm which it believed its members might sustain as a result of expansion of the spent fuel pool's capacity. What it
(FOOTNOTE CONTINUED ON NEXT PAGE)

The licensee appears to concede the point as applied to construction permit and operating license proceedings. It insists, however, that a different rule should obtain in amendment proceedings involving, as does this one, proposed licensing action of assertedly much more limited potential geographical reach. But although we might agree that, from a "zone of harm" standpoint, this proceeding cannot be precisely equated with one involving issuance of a construction permit or operating license, the distinction is of little assistance to the licensee here. Neither the Licensing Board nor we are in a position at this threshold stage to rule out as a matter of certainty the existence of a reasonable possibility that expansion of the spent fuel pool capacity might have an adverse impact upon persons living nearby. That being so, the question whether CEF's concerns are justified must be left for consideration when the merits of the controversy are reached. Cf. Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 426 (1973).

This does not perforce mean that there will be a need for an evidentiary hearing on all or any of CEF's contentions. Even those contentions found to be acceptable for admission to the proceeding will be susceptible to a motion for summary

4/ (FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

did not do was to go on to demonstrate that there was substance to that belief.

disposition under 10 CFR 2.749. If, as the licensee believes, there can be no genuine dispute that the license amendment being sought will not produce harm even to the nearby CEF members, such relief should be obtainable. On the other hand, if a genuine issue of material fact does exist in that regard, then CEF is manifestly entitled to have that issue heard before the amendment is authorized.

2. We reach the same result with regard to Potomac's intervention petition, which was denied on essentially the same basis as that of CEF. Potomac's claim of interest is admittedly not as strong; the closest of its identified members reside approximately 35 miles from the facility. A Potomac member residing in Richmond, 45 miles distant, supplied an affidavit, however, to the effect that she engages in canoeing on the North Anna River. It is not immediately obvious that such recreational activity in the general vicinity of the plant perforce would not be affected by the issuance of the sought license amendment. We might, of course, call upon the Licensing Board to take another look at the question, free of the legal error which seemingly infected its prior ruling.^{5/} The licensee has pressed upon us, however, its urgent need to have the intervention issue

^{5/} Once again, as we read the December 19 order, the Licensing Board there construed the interest requirement of 10 CFR 2.714(a) as imposing an obligation upon all petitioners for intervention "to particularize a causal relationship between injury to [his] interest" and the
(FOOTNOTE CONTINUED ON NEXT PAGE)

settled at an early date. In the circumstances, the preferable course is to direct the grant of intervention to Potomac, leaving it then to the licensee to pursue its summary disposition remedy if so inclined.^{5/}

The December 19, 1973 order of the Licensing Board is reversed and the cause is remanded to that Board for further proceedings consistent with this opinion. In the event that an evidentiary hearing is required, the Licensing Board should consider the desirability of consolidation of the participation of the two organizations. See 10 CFR 2.715a.

It is so ORDERED.

FOR THE APPEAL BOARD

Margaret E. Du Flo
Margaret E. Du Flo
Secretary to the
Appeal Board

5/ (FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

licensing action being sought. Because we have found that interpretation to be in contravention of our prior decisions under that Section, and thus wrong, we do not accept the licensee's invitation to apply the principle that licensing board determinations on the sufficiency of allegations of affected interest will not be overturned unless irrational. See Duquesne Light Co. (Beaver Valley Power Station, Unit 1), ALAB-109, 6 AEC 243, 244 (1973), and case there cited. That principle presupposes that the appropriate legal standard has been invoked.

6/ The action we have taken with respect to the CEF intervention petition was not influenced to any extent by the fact that, at the special prehearing conference below, the licensee took the position that that organization (albeit not Potomac) had met "the very liberal requirements of intervention". See licensee's brief on the appeal, p. 21. The licensee was clearly entitled to alter its opinion, as it did, following the receipt of the Licensing Board's decision.