

NRC PUBLIC DOCUMENT ROOM



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
TEXAS UTILITIES GENERATING	)	Docket Nos. 50-445
COMPANY, <u>ET AL.</u>	)	50-446
(Comanche Peak Steam Electric	)	
Station, Units 1 and 2)	)	

NRC STAFF ANSWER TO PETITION FOR  
LEAVE TO INTERVENE BY CFUR

On February 5, 1979, notice of opportunity for hearing with respect to the application for operating licenses in the captioned proceeding was published in the Federal Register (44 Fed. Reg. 6995). The notice provided that any person whose interest might be affected could submit a petition for leave to intervene by March 5, 1979. Pursuant to that notice, and the provisions of the Commission's Rules of Practice in 10 CFR §2.714, a timely petition for leave to intervene (petition) was filed by Citizens for Fair Utility Regulation (CFUR).

For the following reasons, the NRC Staff (Staff) believes that the CFUR petition satisfies the relevant NRC regulations, except to the extent noted below, and accordingly, the Staff recommends that CFUR's petition be granted.

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I. INTEREST

As stated in the notice, a petition for leave to intervene must satisfy the requirements of 10 CFR §2.714 of the Commission's Rules of Practice. This regulation directs that a petitioner set forth his or her interest in the proceeding and how such interest might be affected by the result thereof, including the reasons why intervention should be permitted. 10 CFR §2.714(a)(2). 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). Also to be stated in a petition are the specific aspects of the subject matter of the proceeding on which intervention is sought. 10 CFR §2.714(a)(2).

It is elemental 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." Portland General Electric Company, supra. Particular attention is to be given to the particularization of the above elements in connection with operating license proceedings, such as the instant one, to assure that potential intervenors have the required

interest to warrant a hearing. Cincinnati Gas & Electric Company, et al. (William H. Zimmer Nuclear Power Station) ALAB-305, 3 NRC 8, 12 (1976).

Clearly, an organization can establish standing through members of the organization who have interests which may be affected.<sup>1/</sup> Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 & 2), 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". Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 n.6 (1973). In fact, the Appeal Board has recently held that geographic proximity of a member's residence to a

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<sup>1/</sup> In light of petitioner'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, \_\_\_ NRC \_\_\_ (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).

Respecting the requirements of 10 CFR §2.714, CFUR has, among other things, asserted that it is an organization of citizens residing, working or attending school in Tarrant County, Texas, approximately thirty-five miles northeast of the Comanche Peak facility. As residents, such members own both personal and real property and have business interests which allegedly could be affected by routine operation or as a result of an accident, as would their health and safety. Petition at 2. The assertion in the CFUR petition, supported by the appended affidavit of member Mrs. Jacobson, that CFUR members reside within about thirty-five miles of the Comanche Peak facility thus satisfies, in the Staff's opinion, the requirement that interest be established.<sup>2/</sup>

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<sup>2/</sup> The Staff considers Mrs. Jacobson's representation that she has been authorized to appear on behalf of CFUR to be adequate. See Duke Power Company (Amendment to Materials License SNM-1773--Transportation of Spent Fuel from Oconee Nuclear Station for Storage at McGuire Nuclear Station) ALAB-528, \_\_\_ NRC \_\_\_, slip op. at 10, February 26, 1979.

The situation is not as clear, however, with respect to a showing of an effect on such interest. As previously noted, the petition merely states that "the health, safety and value of property and livelihood of the general public in Tarrant County may be affected by either routine operation of Comanche Peak Steam Electric Station or by an accident involving release of radioactive elements..." (Petition at 2) Nevertheless, it is reasonably inferred from CFUR's assertions that releases of radioactivity from routine operation and as a result of an accident would have an adverse impact, i.e. cause injury to the health and well being as well as to the property interests of members of CFUR, as averred in Mrs. Jacobson's affidavit. Such effects are, in the Staff's view, within the zone of interests to be protected by the Atomic Energy Act, Portland General Electric Company, supra, thereby satisfying this portion of 10 CFR §2.714, so as to warrant granting the petition as a matter of right.<sup>3/</sup> See also Ten Applications for Low-Enriched Uranium Exports to EURATOM Member Nations, CLI-77-24, 6 NRC, 525, 530-532 (1977).

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<sup>3/</sup> We are unpersuaded by Applicants' arguments to the contrary, set out in Applicants' Answer in Opposition to Petition for Leave to Intervene, dated March 19, 1979. Applicants fail to consider the import of the recent Atomic Safety and Licensing Appeal Board decisions in Virginia Electric and Power Company, supra, and Duke Power Company, supra. As noted above, the Appeal Board, in the former of these decisions, held that "close proximity has always been deemed to be enough, standing alone, to establish the requisite interest." ALAB-522, slip op. at 3. In the latter, the Appeal Board determined that "it was enough for standing purposes that the petition had been signed by a ranking official of the organization who himself had the requisite personal interest to support an intervention petition." ALAB-528, slip op. at 1<sup>0</sup>. In light of these decisions, it is dispositive, in the instant case, that the petition is signed by Mrs. Jacobson who, from her affidavit to be appears a ranking official of the organization and further is expressly authorized to present the organization in this proceeding, and has the requisite personal interest, based on proximate residence, to support the petition.

(Continued)

## II. ASPECTS OF THE PROCEEDING

As noted above, a petition, in addition to setting forth a petitioner's interest and the effects thereon, must identify the specific aspect or aspects as to which intervention is sought. The CFUR petition is silent in this regard. Of particular concern to the Staff as a result of this deficiency is the inability to ascertain the areas which CFUR may seek to litigate if its petition is granted. This is especially significant in an operating license proceeding such as this in which a hearing is not mandatory and caution must be exercised not only to assure that the required interest be established, Cincinnati Gas & Electric Company, et al, supra, but that issues previously resolved are not relitigated. Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 216 (1974).

Consequently, the Staff's position that the petition be granted is subject to the reservation that it be amended to identify the specific aspect or aspects of the proceeding as to which intervention is sought. See 10 CFR §2.714(a)(3).

(Continued)

We note that the frequent references in the CFUR petition to its involvement in various rate proceedings and to the interests of its members as consumers and rate payers is of no moment in the Staff's determination. It has been long settled that such factors are beyond the interests to be protected by the Atomic Energy Act and, absent a showing that any harm to interests derived from such status will or may be occasioned by the impact of the subject licensing action on the environment, are also beyond zone of interests to be protected by the National Environmental Policy Act. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2) ALAB-413, 5 NRC 1418, 1420-1421 (1977). Public Service Company of Oklahoma, et al., supra, at 1147.

Since the Staff believes that intervention as a matter of right has been justified, no discussion of intervention as a matter of this Board's discretion will be presented herein.

In view of our position, the Staff intends, consistent with the Commission's views as stated in the Statement of Consideration accompanying the recent amendment of 10 CFR §2.714, 43 Fed. Reg. 17798, to meet with petitioner in an effort to arrive at agreement on contentions to be submitted in the future. 10 CFR §2.714(b). Since such contentions reflect, in fact, a refinement of the specific aspects which are required to be set forth in the initial petition, 10 CFR §2.714(a)(2), and must be submitted not later than fifteen (15) days prior to the first prehearing conference which is the same time frame provided for amendment of petitions without leave of the Board, 10 CFR §2.714(a)(3), the Staff recommends that petitioner consolidate the identification of the specific aspects of the proceeding on which intervention is sought with its delineation of contentions and that such consolidation be permitted by the Licensing Board.

### III. OTHER MATTERS

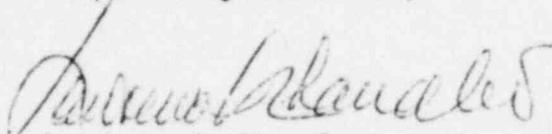
CFUR has requested that all prehearing conferences and the hearing in this proceeding be held in the vicinity of the NRC's Region IV offices in Arlington, Texas. A similar request was made by petitioner CASE in its petition for leave to intervene. The Staff has no objection to these requests. Indeed, we note that prehearing conferences and hearings in NRC proceedings such as this have traditionally been conducted in the vicinity of the facility consistent with the Commission's Statement of General Policy and Procedure relating to 10 CFR Part 2. Appendix A to 10 CFR Part 2, I.(a).

It appears from their respective petitions that petitioners CFUR and CASE have asserted substantially the same interest and effect thereon so as to establish standing in this proceeding. If, upon their submittal of contentions pursuant to 10 CFR §2.714(b), it appears that CFUR and CASE are seeking to raise substantially the same issues, the Staff intends to recommend that participation of CFUR and CASE be consolidated. 10 CFR §§2.714(e) and 2.715(a).

IV. CONCLUSION

For the foregoing reasons and subject to the reservations reflected above, the Staff recommends that the CFUR petition be granted.

Respectfully submitted,



Lawrence J. Chandler  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 23rd of March 1979

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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(Comanche Peak Steam Electric Station, )  
Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO PETITION FOR LEAVE TO INTERVENE BY CFUR" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 23rd day of March, 1979:

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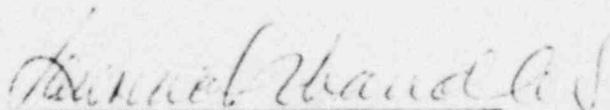
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