

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

RECEIVED

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of
DUKE POWER COMPANY

(Amendment to Materials License
SNM-1773 for Oconee Nuclear Station
Spent Fuel Transportation and Storage
at McGuire Nuclear Station)

USNRC-DELD

Docket No. 70-2623

SUPPLEMENTAL ORDER RULING ON
PETITIONS FOR LEAVE TO INTERVENE

(January 9, 1979)

On November 9, 1978, this Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene published a notice that a hearing will be held to consider the application of Duke Power Company for an amendment to its Special Nuclear Material License No. SNM-1773 which would authorize the receipt and storage at McGuire Nuclear Station of irradiated fuel transported from Oconee Nuclear Station (43 Fed. Reg. 52302).

In the "Order Following Prehearing Conference" dated November 2, 1978, we granted requests for a hearing and petitions for leave to intervene filed by Carolina Environmental Study Group, Safe Energy Alliance, and Carolina Action in Charlotte. All three petitioners were admitted as parties to this proceeding. We also granted the petition of the State of South Carolina to participate as an interested State.

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Rulings on petitions for leave to intervene filed by Natural Resources Defense Council, Inc., and the Davidson College chapter of North Carolina Public Interest Research Group were deferred pending receipt of further information concerning those petitions.

I.

Natural Resources Defense Council, Inc.,
Petition for Leave to Intervene

A. Establishment of standing as a matter of right. On August 21, 1978, pursuant to the Commission's notice of opportunity for public participation in the proposed NRC licensing action for amendment to License No. SNM-1773, NRDC filed a timely petition for leave to intervene (43 Fed. Reg. 32905). Applicant opposed NRDC's petition arguing that, because of lack of standing, NRDC is not entitled to intervene as a matter of right and that since no basis had been stated, discretionary intervention should not be granted. Thereafter, on September 7, 1978, an Addendum was filed by NRDC which asserts that NRDC members live near Clemson, South Carolina, and near Charlotte, North Carolina. In its response filed on September 11, 1978, the NRC Staff also opposed NRDC's petition for failure to establish that it has standing in this proceeding.

Petitioner NRDC is a non-profit, public benefit organization incorporated in the State of New York, with a national membership of

approximately 35,000 persons. This petitioner has long been concerned with the problems of the proper handling of nuclear wastes, including the handling of spent fuel and seeks to intervene in this licensing proceeding on behalf of its members residing in South Carolina and North Carolina, who may be affected by the proposed shipment of spent fuel from the Oconee nuclear facility to the McGuire nuclear facility.

Grant of the petition as a matter of right turns on petitioner's standing to participate and the standing question, in turn, is framed by Section 189 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2239) which provides in pertinent part that: "[i]n any proceeding under this Act, for the granting ... or amending of any license ... the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit such person as a party to such proceeding." The application for an amendment to License No. SNM-1773 is one "for the ... amending of any license." Thus, NRDC in order to establish a right to the hearing it requests must show it possesses standing--that is, an "interest" which may be "affected" by the proceeding.

The interests which the NRDC seeks to protect are set forth in its petition as follows:

Petitioner, NRDC, is a national environmental organization that has long been concerned with the problems of the

proper handling of nuclear wastes, including the handling of spent fuel. Attached to this petition for leave to intervene are letters sent by us, both to the Nuclear Regulatory Commission and to the Secretary of the Department of Energy, regarding what we consider to be the appropriate conduct of consideration of the handling of spent fuel. We are particularly disturbed at the prospect of what we consider to be a significant increase in the transportation and handling of nuclear materials which we do not believe is warranted on the basis of the technological considerations relating to the health and safety of the public.

The issue of NRDC's standing was argued extensively at the October 24, 1978, prehearing conference. Considerable discussion centered on the question of whether NRDC need furnish the name of one or more of its members, who live or conduct substantial activities in reasonable proximity to the activity identified in the application and whose interest may be affected. To assist it, the Board asked the parties to brief the question of whether in order to establish standing for the organization, NRDC must identify at least one member who would have standing in his or her own right.

NRDC argues that it has clearly met the Commission's requirements and has established that it has members who reside within the zone which could be affected by the proposed action and has particularized how they could be affected. Petitioner suggests that such members living in the vicinity of both reactors and along portions of the route which is proposed will be used to ship spent fuel have been "impersonally identified" and notes that it has particularized both

in its petition and in its contentions potential radiological consequences which these persons could suffer from routine handling and transportation of spent fuel or in the event of an accident or malevolent act.

According to Petitioner, the Staff and Applicant have addressed two subsidiary issues which go not to whether an interest will be affected but to whether NRDC has a right to represent those whose interests will be affected. It is argued that they assert, first, that NRDC must disclose the name and address of members whose interest will be affected by the proposed action, and, second, NRDC must establish, beyond compliance with its normal corporate procedures for commencing litigation, that NRDC is authorized to represent its members. Both of these assertions, if accepted, would, according to Petitioner, unduly infringe on the rights of its members and would unduly interfere with the internal operations of NRDC. In addition, petitioner argues that even if it is not entitled to standing as a matter of law, it is entitled to a trial on the factual issues presented by the challenges to standing.

The Staff's position is clearly set forth in its response to NRDC's petition wherein, in pertinent part, the Staff stated:

Although NRDC states a concern within the zone of interest protected by statute, its petition as now drawn does not meet the interest requirements of 10 C.F.R. §2.714. The petition does not indicate the names of any members of the

named organizations who live, work, or are engaged in activities along the proposed transportation routes, near to the Oconee facility, or near to the McGuire facility's spent fuel pool. The Commission requires as a minimum identification of organization members living, working, or engaging in activities near the proposed transportation routes and how their interests will be affected by the proposed amendment. Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976); Public Service Electric and Gas Company (Salem Nuclear Generating Station), ALAB-136, 6 AEC 487, 488-489 (1973); Duquesne Light Company (Beaver Valley Unit 1), ALAB-109, 6 AEC 243, 244, n.2 (1973); Public Service Company of Indiana (Marble Hill, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976). Standing to intervene may be based upon residence in the vicinity of activity. Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631 (1973); Northern States Power Company (Prairie Island, Units 1 and 2), ALAB-107, 6 AEC 188, 190 (1973), aff'd., CLI-73-12, 6 AEC 241 (1973).

The Addendum filed on September 7, 1978, by NRDC does not cure the petition's defect by specifically naming persons who live or work in the vicinity of the proposed action or whether NRDC has been authorized to represent their interests in this proceeding. The Board is required to have a clear and current showing that NRDC members do in fact reside near the place of the proposed activity, that their interests are those set forth in the petition, and that NRDC is the authorized representative for this proceeding, if such is the case. Cf. Barnwell, supra, at 423, See, e.g., Consumers Power Company (Midland Plant, Units 1 and 2), Docket Nos. 50-329-OL, 50-330-OL, "Memorandum and Order", Slip op. August 14, 1978, North Anna, ALAB-146, supra, at 633. (The adjudicatory process may be invoked by only those persons who have real interests at stake and who seek resolution of concrete issues.) It is possible that these defects can be cured by NRDC. (Footnote omitted)

Applicant supports the Staff's position and argues that without specific identification of the individuals which NRDC alleges to represent, and without a particularization of how the interests of those

specific individuals might be adversely affected in this proceeding, the NRDC petition for leave to intervene is defective and should be denied.

Any discussion of the applicable law on the matter must begin by noting that with respect to determining intervention as a matter of right, the Commission has stated that "contemporaneous judicial concepts of standing should be used". Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976). It is well settled that an organization may gain standing to intervene based on injury to itself or to its members. Warth v. Seldin, 422 U.S. 490 (1975); National Motor Freight Assn. v. United States, 372 U.S. 349 (1963); TVA (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977). It is also settled that with respect to national environmental groups such as NRDC, standing is derived from injury in fact to individual members. Sierra Club v. Morton, 405 U.S. 727 (1972).

Standing in this representative capacity turns on "whether the organization has established actual injury to any of [its] ... members" (emphasis added). Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 40 (1976). Representational standing is not founded on a less rigorous standard than individual standing--"the possibility of ... representational standing ... does not eliminate or attenuate

the ... requirement of a case or controversy". Warth v. Seldin, supra, at 511.

In Sierra Club v. Morton, supra, the Supreme Court held that an organization which failed to allege facts showing its members to be adversely affected lacked standing to maintain the action. Specifically, the Court stated:

The Club apparently regarded any allegations of individualized injury as superfluous, on the theory that this was a "public" action involving questions as to the use of natural resources, and that the Club's longstanding concern with and expertise in such matters were sufficient to give it standing as a "representative of the public." This theory reflects a misunderstanding of our cases involving so-called "public actions" in the area of administrative law. [footnotes omitted]

* * *

But a mere "interest in a problem", no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization "adversely affected" or "aggrieved" within the meaning of the APA. [405 U.S. at 735-36, 739]

As noted above, the Commission also has addressed the question of whether an organization which seeks to intervene to vindicate broad public interests of alleged concern to its members or contributors may be granted standing. See Barnwell, supra, at 421-23, wherein the Licensing Board's order denying the American Civil Liberties Union of South Carolina intervention on the basis of its failure to particularize how the interests of one or more of its local members might be affected,

i.e., its failure to supply affidavits from its members which state what their concerns are and why they wish the organization to represent them, was affirmed. More recently, the Appeal Board denied the intervention petition of an organization for lack of standing. Nuclear Engineering Co., Inc. (Sheffield Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737 (1978). In that decision, the Appeal Board affirmed the legal rationale for the rejection of the ACLU petition in Barnwell, supra. Lacking in Barnwell and Sheffield was the identification and particularization of a specific injury to specific members of an organization alleged to result from the proposed licensing action. The desire to vindicate broad public interests said to be of particular concern to the organizations and their members or contributors was held to be legally insufficient to confer standing.

We are told that consistent with NRDC's bylaws, counsel for petitioner sought and obtained approval for the attempted intervention in this proceeding from the NRDC Legal Committee. No further authorization from NRDC members is contemplated. In petitioner's view any effort to go behind the corporate procedure for authorization involves an unwarranted interference in the methods by which NRDC carries out its business. It is said to be a matter between NRDC and its members how NRDC acts on behalf of those members. When a member accepts membership, he accepts the procedures used to decide which cases to pursue.

If dissatisfied with the course taken, the member can discontinue his or her financial support of the organization.

Our study of all the filings leads to the conclusion that the line of decisions allowing organizations to represent the interests of their members does not support admission of NRDC as a party on the basis of the petition for leave to intervene which has been filed in this proceeding. Those decisions reaffirm the requirement that one seeking "judicial" review of administrative action must have suffered an "injury in fact", alleged in a manner capable of proof at trial. Further, in no way have current cases impaired the basic legal principle that one party may not represent another without express authority to do so. Although alluding to rights and affected interests of unnamed members presumably within the protected sphere of interests, the petition, as amended by the Addendum, September 7, 1978, and at oral argument, fails to allege NRDC's authorization by those members to serve as their representative in this proceeding. Although the "overwhelming support" of such members of NRDC for their organization's nuclear activities is asserted, intervention is not alleged to have been authorized by such affected members.

To overcome the impact of the line of cases discussed above, NRDC seeks to invoke protection against the disclosure of its membership lists and argues that the Supreme Court's decision in NAACP v. Alabama, 357 U.S. 449 (1958) is dispositive.

However, the Court's opinion in Alabama does not vitiate the requirement of identification of parties in litigation. The Court in that case was faced with Alabama's attempt to obtain the NAACP's entire membership lists under the guise of enforcing compliance with the State's foreign corporation statute. Finding a chilling effect upon freedom of association produced by the State's implementation of such statute was not relevant to the organization's "doing business" within the State, the Court did not require disclosure of the NAACP membership lists noting that the organization had "made an uncontroverted showing" of past harms to known members upon revelation of their identity. Moreover, as was clear to the Court, the state agency was seeking to compel disclosure of the membership lists as a predicate to virtually all aspects of the organization's existence within the State.

Such a case, and the atmosphere in which it occurred, has little or no bearing on the nuclear licensing procedures challenged here. The Commission's regulations and precedent do not require, nor seek, membership lists of the petitioner. All that is sought is the identification of at least one individual member, and a specification of an interest of that person who might be affected, so that such factors may be adjudicated in the public hearing requested by such presently unnamed individual(s), as provided by the regulations and the Atomic Energy Act. Absent such specifically identified potential harms to at least

one person, there is no basis for requiring a hearing on the merits of the general issues asserted by NRDC. Sierra Club v. Morton, supra.

Accordingly, this Board is not called upon to balance the considerations supporting disclosure against possible significant impingement on fundamental freedoms. Rather, we may rely upon the Supreme Court's resolution of the matter in Sierra Club, wherein the Court recognized that the potential harm to society from generalized special interest litigation is great. Specifically, the Court stated that "[t]he requirement that a party seeking review must allege facts showing that he is himself adversely affected ... serves as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome" (emphasis added). Sierra Club v. Morton, supra, 405 U.S. at 740. See also Duke Power Company v. Carolina Environmental Study Group, ___ U.S. ___, 57 L. Ed. 2d. 595, 615-616 (1978) wherein the Supreme Court recently said:

We have ... narrowly limited the circumstances in which one party will be given standing to assert the legal rights of another. "[E]ven when the plaintiff has alleged injury sufficient to meet the 'case or controversy' requirement, this Court has held that the plaintiff generally must assert his own legal interest, and cannot rest his claim to relief in the legal rights or interests of third parties" [citing Warth, supra; other citations omitted] There are good and sufficient reasons for this prudential limitation on standing when rights of third parties are implicated--the avoidance of the adjudication of rights which those not

before the Court may not wish to assert and the assurance that the most effective advocate of the rights at issue is present to champion them [Citing Singleton v. Wulff, 428 U.S. 106, 113-114 (1976)].

In further support of its position, NRDC contends that non-disclosure is necessary "to protect our donors' expectations of privacy" because it "might inhibit further participation by currently active donors, and could have a chilling effect on potential future support". Affidavit of October 19, 1978, by John H. Adams (Tr. 25-26). NRDC asserts that such alleged "restraint on freedom of association" is prohibited by NAACP v. Alabama, supra (Tr. 37). A reading of Alabama simply does not support NRDC's position. In that case the Court found that:

... [p]etitioner has made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility [Id. at 462].

In the instant case there is no definitive evidence to indicate that any harm has or will result; rather, there is simply an articulated fear of harm.

In summary, NRDC is not an unincorporated association whose members, individually and collectively, themselves constitute the organization. In contrast, it is a legal corporation which is an artificial

entity separate and apart from its membership that exists solely by virtue of a charter issued by the State of New York. No threatened or actual corporate injury resulting from the proposed action has been alleged. Rather, NRDC has asserted interests in a healthy and safe environment possessed by its individual members. However, though claiming such "representative standing", the corporate petitioner has not seen fit to enlighten the Board with respect to the identity of a single person who might be injured. Nor has there been any allegation or showing on the record in this proceeding that any South Carolina or North Carolina members have either requested to be represented or consented to be represented by NRDC in this matter.

Accordingly, the Board concludes that NRDC lacks the requisite legal interest in this proceeding under Section 189 of the Atomic Energy Act of 1954, as amended, to entitle it to intervene as a matter of right.

B. Intervention as a matter of discretion. As has been seen from the discussion above, it has been manifestly evident since the Memorandum and Order of the Commission in Pebble Springs, supra, at 614, that intervention in NRC domestic licensing proceedings as a matter of right is governed by contemporary judicial standing doctrines. Thus, petitioners are required to allege both (1) some injury in fact that has occurred or will probably result from the action involved to the person asserting it and (2) an interest "arguably within the zone

of interests" protected by the statute in question. In Pebble Springs, the Commission also ruled, however, that adjudicatory boards may grant intervention as a matter of discretion to petitioners who are not entitled to intervene as a matter of right. Discretionary intervention is to be determined in accordance with the guidelines set forth in Pebble Springs and in the Commission's Rules of Practice, 10 CFR §2.714. Those guidelines are:

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 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 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 interests will be protected.

(5) The extent to which the petitioner's interests will be represented by existing parties.

(6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.*

The Appeal Board has observed that foremost among the factors to allowing participation as a matter of discretion is whether such participation would likely produce

... a valuable contribution ... to our decision-making process. In the words of the Commission in Pebble Springs, "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."**

Before addressing the question of whether participation by NRDC in the present proceeding has the likelihood of producing a valuable contribution to the decision-making process, we must consider the nature of the discretionary intervention being sought by this petitioner.

* Pebble Springs, supra, at 616.

** Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, at 1145. See: Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), LBP-77-36, 5 NRC 1292, 1294-95 (1977).

We are not here confronted with the situation where a person making a clear showing that he will or might be injured in fact by one or more of the possible outcomes of the proceeding must be denied standing as a matter of right because his "interest" which may be affected by the proceeding is not arguably within the "zone of interests" protected or regulated by the statute or statutes which are being enforced. Nor do we have a petitioner asserting a cognizable interest which might be adversely affected who for one reason or another cannot demonstrate "good cause" for his untimely filing. In those types of situations, application of the guidelines provided by the Commission often leads to the granting of discretionary intervention.

In contrast, the NRDC petition identifies not a single member of the public who has any property, financial or other interest in this proceeding. If in fact the granting of the license amendment requested by Applicant would pose a threat to NRDC or its members, it should have been easy enough to have provided a bill of particulars. But this NRDC has refused to do. In these circumstances, we might well conclude without further inquiry that the petitioner does not satisfy the test for discretionary intervention. However, such a finding would be tantamount to holding that the Commission's regulations regarding public participation in its adjudicatory proceedings do not permit participation by outside groups in individual licensing proceedings. We cannot reach that conclusion.

Clearly, the Commission has long encouraged a permissive approach toward public participation in the nuclear regulatory process. In individual licensing proceedings, its rules permit participation by any person whose interest may be affected by that proceeding. Intervention is easily available to those members of the public. Even where no person having an interest has been identified, participation by an outside group in an individual licensing proceeding may well be in the public interest. NRDC is a prestigious national environmental organization that has long been concerned with commercial applications of nuclear power. In rulemaking proceedings, contributions by outside groups such as NRDC have been particularly valuable. Accordingly, we believe that any outside group, be it the Boy Scouts of America, Ducks Unlimited or the National Rifle Association, to name only a few by way of example, should be afforded discretionary intervention status whenever that group demonstrates that it is both willing and able to make a valuable contribution to the full airing of the issues which the Licensing Board must consider and resolve in a particular proceeding. This is not to say, however, that any organization anywhere in the United States should gain party status in any individual licensing proceeding by the mere assertion that it represents certain unnamed individuals residing near a particular facility and that it has able people ready and willing to travel to that location and actively participate in the hearing on behalf of such unidentified individuals.

The likelihood of producing a valuable contribution must also be shown.

We are told by the NRC Staff that the Board should find that a basis for granting "limited" discretionary intervention has been established. Moreover, the Applicant has withdrawn its opposition. However, in our view, NRDC has not met its burden of satisfying the Board that discretionary intervention by this petitioner will make a valuable contribution to the decision-making process. During the prehearing conference when pressed by the Board to specify the contribution that NRDC could reasonably be anticipated to make, its counsel addressed only the seven contentions submitted by NRDC.* As to Contentions 1 and 2, it was asserted that NRDC's qualifications as an organization to brief and address those is well known. Regarding Contentions 5 and 7, counsel admitted that his client was probably not better qualified than anybody else to address those contentions but noted no one else had raised them. In support of the value of the contribution expected to be made regarding Contentions 3, 4 and 6, the Board was advised that NRDC had already conducted a study of the space available for storage of spent fuel at existing operating reactor sites (Contention 3), that its petition to the Commission to amend 10 CFR Part 20 demonstrated

*Tr. 141-144.

the qualifications of both Dr. Tamplin and Dr. Cochran to uniquely address those questions (Contention 4), and that NRDC had filed numerous comments and participated in the GESMO proceeding (Contention 6).

Under the circumstances, we are not convinced that petitioner has shown significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented. Accordingly, discretionary intervention is not granted to NRDC.

II.

Davidson Chapter of the North
Carolina Public Interest Research Group,
Petition for Leave to Intervene

A. Establishment of standing as a matter of right. At the prehearing conference on October 24, 1978, Chuck Gaddy, Chairperson of the Davidson College Chapter of the North Carolina Public Interest Research Group (PIRG), distributed to the parties a copy of a letter dated September 7, 1978, to the Chairman of this Atomic Safety and Licensing Board.* The Board ruled that the PIRG letter should be treated as a petition for leave to intervene and that the parties would be afforded ten days to file a response. Pursuant to off-the-record discussions, it was represented that PIRG intended to file a contention in support of its letter petition. By an undated letter

*Although the letter in question was dated September 7, 1978, this was corrected to read October 7, 1978, on the record. (Tr. 64)

received by the Applicant on November 1, 1978, PIRG submitted a contention which Applicant has distributed to the Board and the parties.

As has been discussed more fully above, the determination of whether the interests asserted by a petitioner entitle it to status as a party is governed by judicial concepts of standing which require that the petitioner allege an injury that will occur from the proposed action and an interest "within the zone of interests" protected by the relevant statutes. In the Board's view, PIRG has adequately alleged possible injury citing the "... potential threat to the property and possessions of the town's residents and the college and to the health of the students and residents" The alleged injury is clearly within the zone of interests protected by the Atomic Energy Act. Since Mr. Gaddy, a student at Davidson College, is a PIRG member and the author of the PIRG Petition, we conclude that a member of PIRG has demonstrated with the requisite particularity how his interests could be adversely affected by the grant of the subject license amendment. Mr. Gaddy himself is the Chairperson of the Davidson chapter of the North Carolina PIRG. Accordingly, Mr. Gaddy's authorship of the PIRG petition is a representation that the Davidson chapter has authorized intervention in this particular proceeding.

Thus, PIRG has set out with particularity an alleged injury which is clearly within the zone of interests protected by the Atomic Energy Act, has identified a member sufficiently near to the activities

of the proposed action to confer standing, and has adequately presented its authorization to commit PIRG to intervention status in this proceeding.

B. Timeliness. It is undisputed that the PIRG intervention petition is untimely. Therefore, the Board must look to the provisions of 10 CFR §2.714(a)(1) which state:

Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balance of the following factors in addition to those set out in paragraph (d) of this section:

- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

A most important consideration in reaching such a determination is whether the petitioner has adequately demonstrated good cause for a tardy petition. In the present instance, the showing is not substantial. PIRG asserts that it failed to meet the August 28, 1978, deadline because

most of its members were away from school in other parts of the state or the country during the summer and were unaware of the developments towards a licensing decision. However, the Notice was published in the Federal Register which is distributed nationwide and thus was available to the PIRG membership. Moreover, it appears that PIRG did not endeavor to intervene promptly once classes reconvened on September 6, 1978.

Consideration of the contention filed by PIRG indicates that this petitioner's interest is related to the presentation of certain evidence resulting from a PIRG investigation concerning the capability of certain public safety officials to respond to traffic accidents. But, if PIRG wishes to have the results of its investigation made available to the Licensing Board for its examination, other means are available. For example, PIRG could present its material to the Board in the form of a limited appearance statement and the Board could then pursue issues it determines to be significant.

As to the assistance one might expect in developing a sound record, we are of the view that this factor appears to weigh favorably for PIRG's participation. Petitioner has undertaken to provide the Board with relevant information in the area of its interest and has already issued a report evidencing an interest in nuclear transport. However, PIRG's case appears to be cumulative with respect to

the cases of other participants in this proceeding. The party, Carolina Action, has in its Contention No. 4 proposed a contention dealing with substantially the same issue. Thus, to the extent that it is a litigable issue, PIRG's interest will be represented by an existing party. Clearly, the admission of another party would likely delay the Board's consideration of the matter.

In the balancing of the various factors which this Board must weigh in ruling on the adequacy of an untimely filing, the element of good cause plays an essential role. Here, PIRG has made some showing of good cause although it is not substantial. Thus, PIRG must make a particularly strong showing on the remaining four factors to merit a favorable Board ruling. The fact that PIRG could be expected to assist in developing a sound record on the issue it wishes to raise weighs in PIRG's favor. Weighing against PIRG are that its interest could be adequately protected through the mechanism of a limited appearance and that its interest is being adequately represented by Carolina Action. In addition, it appears likely that the petitioner's participation will delay the proceeding, although it is difficult to measure the impact of any delay. In view of the above, the petition must be denied as untimely.

C. Contentions. PIRG has asserted the following contention:

Contention: That the prospect of a traffic accident involving a reactor-waste carrier and involving leakage of some of the contents of said carrier poses an emergency situation which public safety officials in Charlotte (i.e., police chief, fire chief, civil defense head, etc.), are not adequately prepared to handle in regards to protection of the public.

Such contention fails to meet the specificity and basis requirements of 10 CFR §2.714(a) which provide that in order to put a matter in issue, it must be stated with reasonable specificity and have some basis assigned to it. It is not sufficient merely to make a completely unsupported allegation.

D. Intervention as a matter of discretion. Having decided that PIRG may not intervene as a matter of right, it remains for the Board to determine whether this petitioner may intervene as a matter of the Board's discretion under the guidelines noted by the Commission in Pebble Springs, supra. Following a careful review of the pleadings from the standpoint of whether discretionary intervention would likely result in a useful contribution to the proceeding and based upon the Board's assessment of all the facts and circumstances of this particular case, the Board concludes that petitioner has not shown any significant ability to contribute on substantial issues of law or fact which another party might not otherwise raise.

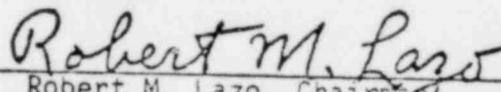
III.

ORDER

WHEREFORE, IT IS ORDERED, in accordance with the Atomic Energy Act of 1954, as amended, and the Rules of Practice of the Commission, that the petition for leave to intervene of National Resources Defense Counsel, Inc. (NRDC) and the petition for leave to intervene of the Davidson chapter of the North Carolina Public Interest Research Group (PIRG) are hereby denied.

Pursuant to 10 CFR §2.714a, this order may be appealed to the Atomic Safety and Licensing Appeal Board within ten (10) days after service of the 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.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Robert M. Lazo, Chairman

Dated at Bethesda, Maryland,
this 9th day of January, 1979.