

Docket No. 50-397 OL

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behalf of a group called the Hanford Conversion Project (HCP).^{1/} The individuals, who live in Portland, Oregon, based their "interest" on the allegation that (1) they are indirect ratepayers, (2) they live downstream from WPPSS-2 and an accidental release of radioactivity could be transported to them via wind currents, river flow, and the food chain with harmful effects, (3) the "job return" on a nuclear plant is less than in other alternate energy investments, (4) Price-Anderson, and (5) they enjoy recreational benefits of the Columbia River which will be denied if an accident contaminates the river. The petition listed twelve members of HCP giving their home addresses. The petition also stated many members live in the vicinity of the facility.

The NRC Staff responded on September 18, 1978, by pointing out that the two individuals live more than 150 air miles and 200 river miles from the site. The Staff concluded that the individuals failed to particularize a possible injury to themselves that realistically might

^{1/} The State of Washington by letter of August 18, 1978, stated if a "hearing is held" it would like the opportunity to make a limited appearance under 10 CFR 2.715(a).

result from plant operation citing Duquesne Light Company (Beaver Valley Unit 1), ALAB-109, 6 AEC 243, 244 (1973); Tennessee Valley Authority (Watts Bar Units 1 and 2), ALAB-413, 5 NRC 1418 (1977). The Staff also stated that the location of the members of HCP closest to the facility was more than fifty miles from WPPSS-2.

On September 22, 1978, the Applicant opposed the petition of the individuals on the bases that (1) they live approximately 180 air miles and 220 river miles downstream from the site and that their location is too remote to be affected by either normal operations or a credible accident, and (2) the economic interest as a ratepayer does not confer standing as a matter of right.^{2/} The Applicant also

^{2/} The economic interest of a ratepayer is not sufficient to allow standing to intervene as a matter of right since concern about rates is not within the scope of interests sought to be protected by the Atomic Energy Act. Kansas Gas & Electric Co. et al. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 (1977); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1420-21 (1977); Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426 (1977); Public Service Co. of Oklahoma, et al. (Black Fox Nuclear Power Station, Units 1 & 2), LBP-77-17, 5 NRC 657 (1977). Nor is such interest within the zone of interests protected by the National Environmental Policy Act. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-333, 3 NRC 804 (1976).

stated that the location of the membership of HCP was beyond the geographic zone which might be affected by the operation of WPPSS-2 since the closest member is approximately 65 air miles from the facility.^{3/}

On October 11, 1978, the Board issued an Order which recited the allegations of the Petitioners and the responses of the Applicant and Staff. The Order stated that there would be a prehearing conference on November 15. The Order also stated "if Petitioners wish to file an amended petition to correct the deficiencies which have been correctly identified by the Applicant and the Staff, it must be filed by November 1, 1978, with service on Applicant and Staff as well as the Board and the Office of the Secretary." (Due

^{3/} Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372, n. 6 (1973).
Portland General Electric Co. (Trojan Nuclear Plant), ALAB-496, 8 NRC 308, (September 12, 1978) (40 miles);
River Bend, supra, 7 AEC 222 (1974) (25 miles); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631 (1973) (16 miles);
Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188 (1973) (40 miles); Waterford, supra, 6 AEC 371 (1973) (20 miles); Pacific Gas and Electric Co. (Humboldt Bay Power Plant, Unit 3), ASLB Order (May 15, 1978) (20 miles).

to errors in service of the Board's Order, the prehearing was rescheduled for November 21 with the amended petition, if any, due November 10. For unavoidable reasons, the prehearing was rescheduled first to January 11 and finally held on January 25, 1979).

An amended petition (referred to as #2) was filed on November 10, 1978, by Ms. Garrett and Creg Darby (also of Portland). An affidavit was subsequently filed authorizing him to represent HCP in place of Helen Vozenilek.^{4/}

Mr. Darby petitioned both as an individual and as co-chairman of HCP. There was no mention of his out-of-time filing but he did state that he has a Bachelor of Arts degree; has taken courses in math and physics; he has studied safety and economic issues of nuclear power and that he is an independent student of philosophy, with a special interest in the philosophy of science.

The petition stated that Ms. Garrett is a law graduate of Northeastern University and that she was active in the Trojan proceeding. The #2 petition stressed that Petitioners

^{4/} Undated Notice of Withdrawal of Appearance of Helen Vozenilek attached to Petition No. 3 but it stated Creg Darby would represent her personal interests.

consumed products from the Columbia River and products raised within 50 miles of the WPPSS-2 site. It also stated Petitioners were potential parents. Attached to the #2 petition were affidavits from several members of HCP who reside more than 50 miles from the facility. Two other affidavits were flagged for special attention. Mr. H. C. Roll lives in Oceanside, Oregon, more than 200 air miles from WPPSS-2, but owns land 10 to 15 miles from the site. He rents the land and two residences to tenants. He alleges that the rental value of his land could be adversely affected and that an accidental release from the plant could damage the land and his tenants. He states he is a member of HCP. The affidavit is dated November 8, 1978. The second affidavit specifically mentioned was from Mrs. Ruth C. Long who stated that she resides with her family about 12 miles from the plant and its operation could affect home, garden, children, and husband. She states she is a member of HCP. The affidavit is dated November 6, 1978.

The Staff responded on December 14, 1978, by reiterating that the individual Petitioners' distance from the plant is too remote and their consumption of food products is no more than a generalized grievance. The Staff concluded their interest is insufficient. The Staff stated that the "interest" of HCP rests on the membership of Ruth C. Long and would be established if she was a member on August 28, 1978, when the original petition had to be and was filed. The Staff mentions that a separate letter from Mr. Roll establishes that he was not a member at that time.^{5/} (At the prehearing conference, the representative of HCP [Garrett] indicated that Long and Roll became members of HCP at the time they signed the affidavits. Tr. 31, 32).

On December 15, 1978, the Applicant stated that the Petitioners did not identify the location of the "recreational use" of the Columbia River so it cannot be assumed to be near

^{5/} Letter dated November 7, 1978, from H. C. Roll to Doreen L. Nepom applying for HCP membership. (Attached to Petition No. 2).

the site and to recognize the consumption of food products which may have been produced near the site as conferring standing would have the effect of establishing "standing" in a California proceeding for an individual on the east coast who ate California oranges.

In addition, Applicant pointed out that Mr. Darby did not comply with the requirements of 10 CFR 2.714 for the filing of late petitions and his petition should be denied on lack of interest and out-of-time.

The Applicant stated that HCP's standing rests on the "interest" of five of its members (Roll, Snow, Beadle, Faller, and Long). It rejected Snow, Faller, and Beadle since they live more than 50 miles from the plant. It rejected Mr. Roll since he was not a member of HCP on August 28, 1978, and that his allegation of possible financial loss to his rental property does not give him standing nor can he establish "interest" on behalf of his tenants. The Applicant rejected Mrs. Long on the assumption that she became a member of HCP after August 28, 1978, and failed to comply with the provisions of 10 CFR 2.714 in that no justification for non-timely filing was made.

On January 10, 1979, Petitioners filed another petition (#3) but it did not refer to "interest" or good cause for late filing of Mr. Darby except to mention Petitioners did not believe the NRC Staff would represent their interests and there were no other Petitioners. The #3 petition superseded #2 in part but not totally.

The Applicant, NRC Staff, Petitioners Garrett and Darby, and the State of Washington were present at the prehearing conference on January 25, 1979.

At the prehearing conference, Petitioners repeated their claim of individual interest based on living downstream on the Columbia River (Tr. 9). Both Applicant and Staff opposed the petition and stressed the fact that Petitioners must have a "real stake" in the proceeding to be granted intervention in an operating license proceeding and in this matter Petitioners' distance from the site is too remote for their interests to be affected. (Tr. 11, 12, and 15). The State of Washington^{6/} recited the history of its proceedings relative to WPPSS-2 and stated its position that there was a need for the power from the facility. (Tr. 17-22).

^{6/} The State also, by letter of September 27, 1978, urged the Board to deny the petitions.

Regarding HCP, the Petitioners stated they read the Board Order of October 11, 1978, as permitting total amendment of the petition and that therefore the affidavits of Mr. Roll and Mrs. Long were timely (Tr. 8). Petitioners argued that the Board should not be bound by the distance rule of 50 miles since there are several possible sources of radiation release at the Hanford Nuclear Reservation. Both Applicant and Staff protested that Mr. Roll and Mrs. Long were not members of HCP when the original petition had to be and was filed and they have not made the showing for late filing required by 2.714 in addition to Mr. Roll's lack of interest. Applicant and Staff argued that the cut-off filing date for the petition was to ascertain "interest" and that the permission granted by 2.714 to file supplements was limited to the contentions. (Tr. 32-40).

Petitioners argued that while they did not concede there was a late filing, they addressed the criteria for late filing in 2.714.(Tr. 42-47). The Applicant challenged the Petitioners' position on each of the five factors (Tr. 50-53) and the Staff responded adversely to Petitioners' allegations point-by-point stating that the Staff's position on these points would also apply to discretionary intervention. (Tr. 53-56).

If Mrs. Long or any other affiant from HCP was in attendance at the prehearing conference, their presence was not made known to the parties or the Board.

INTERVENTION AS A MATTER OF RIGHT

Applicant and Staff both argued that the purpose of the original filings of petitions with cut-off date of August 28, 1978, was to identify any persons whose interest may be affected by the proceeding. They both contend that the purpose of subsequent amendments to original filings as provided for under §2.714(a)(3) and (b) is the setting forth of contentions and not for the purpose of adding new members to satisfy the "interest" requirement. Applicant and Staff contend that, absent a non-timely filing demonstration^{7/} the showing of "interest" must be made on the basis of the membership as described in the August 28, 1978, original filing (Petition #1). Applicant and Staff strongly contend that on the basis of the August 28, 1978, filing (Petition #1) intervention as a matter of right must be denied because the necessary "interest" was not demonstrated.

7/ 10 CFR §2.714(a)(1)

The Board agrees. The two individual Petitioners, Susan M. Garrett and Helen Vozenilek are too remote^{8/} (180 air miles and 220 river miles) to be affected by the proceeding. All other members of HCP, a Portland, Oregon-based organization were identified as living more than 50 miles from the plant and therefore do not have an interest which may be affected. There is no allegation of recreation in the vicinity of the site. The original petition (#1) must fail because the "interest" [which] may be affected by the proceeding, "within the meaning of Section 189a. of the Atomic Energy Act, 42 U.S.C. 2239(a)" has not been demonstrated.

Given that Petition #1 fails for lack of demonstrable "interest", a unique question arises as to whether the "interest" defect can be cured by acquiring a new member, residing in the vicinity of the plant, more than two months after the deadline for filing of petitions. The Board concludes that while the "interest" requirement may be "particularized" for timely petitioners it cannot be cured

^{8/} At the prehearing conference, it was clarified that Helen Vozenilek has withdrawn except to remain a member of HCP.

by an organization who acquires a new member considerably after the fact who has not established good cause for the out-of-time filing.^{9/}

The second petition contained additional members' names including Mr. Creg Darby. Only two, Mr. Roll and Mrs. Long, claimed an interest within 50 miles of the site. Mr. Roll lives several hundred miles from the site at Oceanside, Oregon, but he owns improved farmland 10 to 15 miles from the site. He has tenants living in the two residences and farming the land. Mrs. Long resides with her family approximately 12 miles from the site. It was established at the prehearing that neither Mrs. Long nor Mr. Roll were members of HCP on the filing date of August 28, 1978, but joined HCP in early November when they prepared their affidavits. We consider them late Petitioners who must meet the criteria of 2.714 for out-of-time filing as

^{9/} By "particularized" the Board had in mind two points relative to interest. The #1 Petition alleged "recreational benefits" but did not state if this was meant to allege use within the vicinity of the plant. If this had been the fact, clarification would have been meaningful. The petition also said members resided in the vicinity of the plant. If this had been the fact, particularization would have been meaningful.

well as establishing interest. We interpret 2.714(a)(3) to permit amending a petition relative to interest as limited to those individuals who made a timely filing and are merely particularizing how their interest may be affected. We do not believe it is an open invitation for an organization whose membership is far removed from the facility and who claimed to have membership in the vicinity of the site to later try to recruit individuals in the vicinity as members and gain a retroactive recognition of interest. We do not have to consider the question of the out-of-time filing of Mr. Darby or other HCP members (except Roll and Long) since their location from the plant is too remote to establish a possibility of harm from normal or accidental releases from the plant. Mr. Darby lives in Portland. We realize that there is a possibility that people residing in Portland may consume produce, meat products, or fish which originate within 50 miles of the site but to allow intervention on this vague basis would make a farce of 2.714 and the rationale in decisions pertaining to petitions to intervene.

Mr. Darby and Ms. Garrett, while protesting that Petitioners Roll and Long were not out-of-time Petitioners, attempted to fulfill the requirements for late filing set forth in 2.714(a)(1)(i-v) on behalf of the Petitioners as

members of HCP. In relevant part, Section 2.714(a) provides:

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 balancing 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.

(1) It was stated that Mrs. Long and Mr. Roll were not previously aware of the proceeding. As a lawyer, Mr. Roll should have been aware of the Federal Register notice. It is understandable that Mr. Roll would not see the local press releases (issued July 26, 1978) but Mrs. Long resides in the local area. The Petitioners apparently did not make an effort to keep informed. We do not believe "good cause" has been established. (2) Since Petitioners' interest is to prevent or delay the operation of WPPSS-2, it may be

correct that that interest will not be protected by others. The State of Washington, after public hearings, approved WPPSS-2 and pleads for the need of its power. The NRC Staff supports operation of the plant. (3) The Petitioners have not been convincing that they can assist in developing a sound record. A review of the contentions shows that Petitioners allege that the application does not adequately meet the law or the regulations but there is actually nothing specific to show a familiarization with the plant or the documents relating to the facility. None of the contentions met the specificity requirements of 2.714. The only proposed contention that was reasonably site-specific was an unsupported allegation that WPPSS-2 was located directly over a major fault line. (Tr. 85-89). It will be the responsibility of the NRC Staff to investigate this allegation. In our opinion, developing a sound record calls for more than a sincere desire to put on a direct case or to try to have effective cross-examination. (4) Petitioners have stated that their interest will not be represented by the NRC Staff. In our judgment, even if this

is correct, it does not warrant on its own admitting a late intervenor. (5) There is no doubt that the proceeding would be delayed by a hearing. The resources of both Staff and Applicant would be expended on the hearing rather than continuing the facility review without the interruption of a hearing.

It is our determination that neither Mr. Roll or other HCP members (except Mrs. Long) whose names were added to the #2 Petition have established a proximity to the site which would establish interest. Mr. Roll's interest is based primarily on speculative financial loss and does not have merit. An occasional trip (unspecified) by Mr. Roll to his farm is insufficient to determine his health and safety would be endangered. Mrs. Long's location in the vicinity of the plant site establishes that her interest could be affected but the Board has determined she has failed to meet any of the criteria in 10 CFR 2.714 which warrants accepting a late petition.

On the basis of the pleadings and results of the prehearing conference, the Board finds that Petitioners' intervention as a matter of right must be denied.

INTERVENTION AS A MATTER OF DISCRETION

The Board has considered the criteria established by the Commission for determining whether, in those cases where timely petitioners fail to meet standards for intervention as a matter of right, discretionary intervention should be granted.^{10/} Considering those factors weighing in favor of allowing intervention, it may be said that the extent to which Petitioners' participation may reasonably be expected to assist in the development of a sound record is minimal owing to a lack of resources. As regards the nature and extent of Petitioners' property, financial, or other interest in the proceeding, these also may be described as non-existent or minimal. The HCP is a non-profit activists' coalition of individuals and member groups concerned with the issues of nuclear energy and nuclear weaponry. The effect of a Board Order denying Petitioners' intervention will be that no public hearing will be held. The Board feels that in this case the

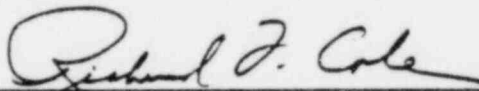
^{10/} Pebble Springs, supra, at 616.

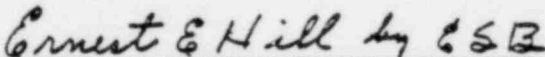
interests of the public including Petitioners' interest will be adequately protected by the Staff.


Accordingly, the Board can see no justification for granting intervention as a matter of discretion for timely Petitioners in this proceeding.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD


Richard F. Cole, Member


Ernest E. Hill, Member


Elizabeth S. Bowers, Chairman

Dated at Bethesda, Maryland
This 6th day of March 1979.