

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

METROPOLITAN EDISON COMPANY,
JERSEY CENTRAL POWER & LIGHT COMPANY,
and
PENNSYLVANIA ELECTRIC COMPANY
(Three Mile Island Nuclear Station,
Unit 1)

Docket No. 50-289

APPLICANTS' REPLY TO PETITION
FOR INTERVENTION OF CITIZENS
FOR A SAFE ENVIRONMENT AND
ENVIRONMENTAL COALITION ON
NUCLEAR POWER

1. On August 7, 1972, a petition to intervene in this proceeding was filed on behalf of Citizens for Safe Environment and Environmental Coalition on Nuclear Power (hereinafter collectively "Petitioners").* For the reasons set forth below, Metropolitan Edison Company, Jersey Central Power & Light Company, and Pennsylvania Electric Company (hereinafter "Applicants") respectfully request the Commission to deny the Petition, or in the alternative to promptly order the procedures outlined in paragraph 17 below.

* Contrary to the requirements of the Commission's Rules of Practice, 10 CFR §2.701(b), the Petition was not served on Applicants or Applicants' counsel. Applicants request the Petitioners in the future comply with this requirement.

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I. STANDING

2. Initially, Applicants observe that the Environmental Coalition on Nuclear Power does not appear to have adequately joined in the Petition. While an affidavit by a representative of Citizens for a Safe Environment and an affirmation by counsel on behalf of this group accompany the Petition, no one has signed the Petition on behalf of the Environmental Coalition. The Certificate of Service even identifies the document as "the Petition of Intervention by the Citizens for a Safe Environment." The Commission should therefore obtain a sworn authorization by an authorized representative of the Coalition.

3. Neither Petitioners identifies any of its members whose interests might be affected by the issuance of an operating license for Three Mile Island Nuclear Station, Unit 1. This failure would apparently violate the requirements set down by the Supreme Court in Sierra Club v. Morton, 31 L.Ed. 2d 636 (1972).

4. Although the Citizens for a Safe Environment is composed only of "individuals" (Petition, p. 1), the Environmental Coalition on Nuclear Power is apparently comprised of "twenty-nine organizations in the Pennsylvania and New

Jersey area" as well as individual members (Petition, p. 2). In addition to the identification of individuals discussed in para. 3 above, the Commission should ascertain the identity of these member organizations and whether these organizations have in fact authorized their participation in this proceeding.

5. The Petition to Intervene sets forth the interests of Petitioners in an inadequate fashion. The Supreme Court in Sierra Club v. Morton, supra, specifically ruled that a "special interest" in a problem is insufficient grounds for intervention, 31 L.Ed. 2d at 645-46. Yet Petitioners explicitly rely upon such a "special interest." The Petition asserts that Citizens for a Safe Environment

"by its past activities and conduct, has exhibited a special interest in the protection of the natural resources of the Susquehanna Valley" Petition, p. 1. (emphasis added)

The Petition then states that the interest of the Environmental Coalition on Nuclear Power is the same as that of Citizens for a Safe Environment.* Nowhere is there any showing that any

* Applicants note that the Environmental Coalition, in virtually identical language, sought to adopt the interests of co-petitioners in the two other licensing proceedings

member of Petitioners has met the Sierra Club test, i.e., that he "must have himself suffered an injury," 31 L.Ed. 2d at 645.

6. The statement of Petitioners' interests does not comply with the intent of the Commission's present rules. It clearly violates the provisions of AEC's revised Rules of Practice, §2.714(a), which mandates a petition to intervene "setting forth with particularity . . . the facts pertaining to [the petitioner's] interest." While the Statement of Consideration provides that these revised rules should not be arbitrarily applied to pending proceedings, it also recognizes that these rules "will be applied as appropriate where the context so indicates." 37 Fed. Reg. 15130 (July 28, 1972).

7. We would also call the Commission's attention to the advice of Judge Tamm of the U. S. Court of Appeals for the D. C. Circuit in which he warned against the practice of allowing parties to intervene because "it won't do any harm," Wilderness Society v. Morton, ____ U.S. App. D.C. ____, ____

* Continued

in which it has sought intervention. See Petitions to Intervene in the Limerick proceeding, Docket Nos. 50-352, 50-353, and in the Newbold Island proceeding, Docket Nos. 50-354, 50-355. This tactic calls into serious question the legitimacy of the Coalition's participation.

F.2d _____, 4 ERC 1101, 1103 (1972)(concurrence),

"I, nonetheless, feel constrained to vocalize a gnawing concern and uneasiness about a discernably fashionable trend in the judiciary today. The trend is toward justification of intervention upon incantation of the phrase 'it won't do any harm.' I respectfully submit that painting with such broad amorphous strokes absent an analysis of the hues and textures employed can only lead to a collage-cluttered canvas sans symmetry or perspective. Granted intervention is a useful tool, but it is a tool which must be used carefully. We are presently in the day of the multi-party class action suit where trial judges are often hard-pressed to narrow issues and parties. These judges valiantly strive to prevent a lawsuit from becoming unwieldy; we should be similarly wary, lest the manageable

lawsuit become an unmanageable
cowlick."

II. CONTENTIONS

8. Petitioners present a confused concoction of contentions. These contentions fail to meet the tests established in the Commission's existing rules which require contentions to be set forth in reasonably specific detail. They clearly lack the showing of basis demanded by the Commission's revised rules, §2.714(a). In addition, many contentions challenge AEC regulations not properly challengeable in this proceeding. None of the contentions show any indication that it has a basis in fact, substance or in responsible scientific opinion.

9. A significant number of Petitioners' contentions challenge various AEC regulations and other matters which have been excluded from consideration in individual facility licensing proceedings. Memoranda and Orders of the Atomic Safety and Licensing Appeal Board, In the Matter of Vermont Nuclear Power Corp., Docket No. 50-271, June 20, 1972. For example, contention (f) challenges (to the extent that a reference to the "contentions" of the Consolidated National Intervenors in ECCS rule-making hearings can be considered a challenge) the

Commission's ECCS Interim Acceptance Criteria. Contentions 33, (g) and (o), challenge the "as low as practicable" rules and the Appendix I rule-making proceeding. Contentions 15 (the second Contention 15), 16, 17, 20, 24, and (a) seek to explore environmental effects of the uranium fuel cycle. None of these matters are at issue in this proceeding under the Appeal Board's ruling and these contentions should be rejected by the Commission.

10. Other contentions involve challenges to AEC regulations not within the compass of the Vermont Yankee decisions and should be treated pursuant to appropriate Commission procedures, 10 CFR §2.758 (37 Fed. Reg. 15127, 15136, July 28, 1972). For example, Contention 26, in claiming a failure to analyze the costs of "full-liability insurance coverage," appears to be no more than a challenge to 10 CFR Part 140 and the underlying Price-Anderson legislation.

11. A number of contentions seek to raise matters which involve construction permit requirements which were, or could have been, dealt with during the construction permit proceedings. For example, Contention 37 specifically challenges "failure pressures" of the containment vessel as set forth in the Staff's Safety Evaluation at the construction permit proceeding. Contention 39 challenges the maximum probable flood,

another matter dealt with in the construction permit proceeding. These contentions, and all others which involve construction permit requirements, are outside the scope of an operating license proceeding and should be rejected.

12. Virtually none of the contentions are set forth with reasonable specificity, or indeed, any specificity at all. Instead, they are unsupported allegations of the vaguest possible kind with no showing of factual, scientific or technical basis. The contentions also ignore information which has long been publicly available and of which Petitioners have long been aware. For example, Contention (a) (which is not even a "contention") merely demands that no operating license be issued until the safety of radioactive waste transport from Unit 1 has been demonstrated; this fails to state why such transportation will not be safe and ignores the information presented in §§3.6.4.4 and 3.6.4.6 of Applicants' Environmental Report and in §§V.E.2-5 and VI.B.2-5 of AEC's draft Detailed Statement. Contention (j) claims that Unit 1 instrumentation does not have sufficient redundant systems "to monitor variables and systems," but does not identify which systems are involved, how much more redundancy is needed and why, which "variables and systems" will not be monitored, etc. Contention (n) alleges that Applicants' meteorological data and studies "are

not proper assumptions," without any indication as to why they are improper or the nature of this impropriety. Contention (q) claims the Applicants' quality control program is inadequate, but fails to give a single specific example of how or why it is inadequate. Contentions 7 and 10 allege that plant shut-down will result in fish kills, citing a statement that a 10°F. change in temperature is harmful; these contentions ignore the data presented in the Environmental Report, §5.1, and the draft Detailed Statement §V.B.2, that the maximum temperature increase (even with no allowance for mixing) will be 3° F. and that, normally, thermal discharges will be cooled to river ambient temperature. Contention 22 asserts that the post-operational environmental monitoring program is "inadequately described and analyzed" without any indication as to what part or parts of this program are not adequately described, why that description is inadequate, and what an adequate description should be, and without any reference to the description of the monitoring program in Applicants' Environmental Report, §5.5, and the draft Detailed Statement, §§V.C.3-4, V.D.5 (including Table 15). Such unspecific contentions should be rejected by the Commission.

13. This failure to show that there is some factual, scientific or technical basis for the contentions constitutes a challenge to the very function of the public hearing process

at the operating license stage. The Commission has made clear that the purpose of the public hearing at the operating license stage is not to perform a de novo review of the facility and the license application. See Atomic Safety and Licensing Appeal Board Memorandum and Order, In the Matter of Wisconsin Electric Power Company, Docket No. 50-301, August 18, 1971. At the public hearing stage, intervenors are given the opportunity to present relevant information, not the opportunity to carry out a fishing expedition into the regulatory process. As the Commission ruled in its Memorandum and Order of March 30, 1972, In the Matter of Florida Power & Light Co., Docket Nos. 50-250, 50-251, contentions which are not based upon specific factual matters are not acceptable.

14. Yet, the direct result of the type of contentions which Petitioners present is to turn the regulatory process upside down. Notwithstanding the AEC's statutory and regulatory scheme which entrusts the responsibility for de novo review to the AEC's Regulatory Staff and notwithstanding the Staff's detailed, painstaking review of the license application and the facility, Petitioners would duplicate this function in the hearing itself by assuming the role of a surrogate Regulatory Staff.

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15. It is not enough that a petition to intervene

manages to frame broad allegations which, if true, would be grounds for intervention. It is essential that the Commission require such contentions to be specific as presently required by §2.714 or, as required by the revised Rules of Practice, that a Petitioner provide with particularity the basis for his contentions. Any other policy simply invites petitions which do no more than collect a long list of unsupported contentions which ignore the information contained in the application and AEC staff evaluations and which offer no promise of additional relevant information or responsible technical opinion. Such petitions serve merely to delay the hearing process and to expand the areas of controversy at the hearing to matters on which Petitioners can make no substantive contribution. To avoid this undesirable situation, the Commission is fully justified in requiring "high threshold levels of allegation." See Gellhorn, "Public Participation in Administrative Proceedings," 81 Yale L.J. 359, 373 n. 57 (1972).

16. Petitioners have asserted that they need additional time, because of the effects of the floods of June 22-24, to submit their contentions. Without conceding that Petitioners have shown good cause for an untimely filing, Applicants would have no objection if Petitioners file by September 7, 1972,*

* Applicants understand that the State of Pennsylvania has been granted an extension of time until this date to decide whether or not it seeks to intervene in this proceeding.

a restated set of contentions which meet the requirements of AEC's revised Rules of Practice, 10 CFR §2.714(a). These revisions become effective on August 28, 1972, and would thus govern petitions to intervene filed subsequent to that date. Such restated contentions would be accompanied by supporting affidavits by persons competent to make such affidavits, setting forth with particularity the factual, scientific and technical basis for each contention. The Commission should make clear that a response which merely submits a lengthy bibliography to "support" a contention is not adequate.

CONCLUSION

17. For the reasons set forth above, Applicants respectfully urge that the Commission deny the Petition. In the alternative, Applicants request the Commission to:

- a) require Petitioners to file, by September 7, 1972, an identification of members of each Petitioner who might be affected by the issuance of an operating license for Three Mile Island Nuclear Station, Unit 1; an identification of those organizations who are members of the Environmental Coalition on

Nuclear Power; and verifications by such individuals and organizations that they have in fact authorized Petitioners to represent their interests in this proceeding;

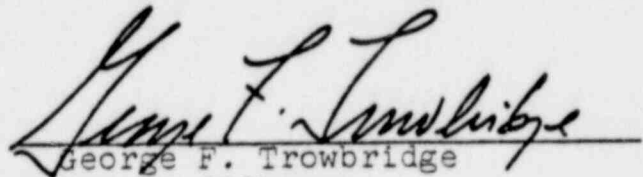
- b) require Petitioners to file, by September 7, 1972, restated contentions accompanied by supporting affidavits by persons competent to make such affidavits, stating the factual, scientific and technical basis for each contention; and
- c) designate an atomic safety and licensing board, and schedule a pre-hearing conference within fifteen days after the scheduled filing of the identifications, verifications, restated contentions and affidavits required under (a) and (b) above, to rule upon the Petition to Intervene as supplemented by the filings required by (a) and (b) above, and

to consider responses to such
filings by Applicants and the
Regulatory Staff.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By


George F. Trowbridge
Jay E. Silberg

Counsel for Applicants

Dated: August 16, 1972

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CERTIFICATE OF SERVICE

I hereby certify that copies of Applicants' Reply to Petition for Intervention of Citizens for a Safe Environment and Environmental Coalition on Nuclear Power were served upon the following, by deposit in the United States mail, this 16th day of August, 1972:

Secretary
U. S. Atomic Energy Commission
Washington, D. C. 20545
Attn: Mr. Frank W. Karas, Chief,
Public Proceedings Branch

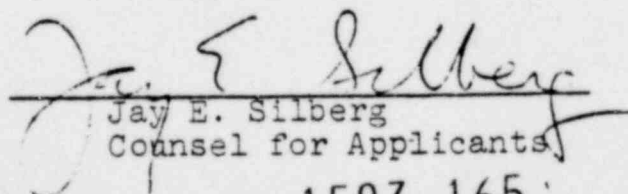
Joseph Gallo, Esq.
Office of General Counsel
U. S. Atomic Energy Commission
Washington, D. C. 20545

Herbert C. Goldstein, Esq.
133 State Street
Harrisburg, Pennsylvania 17101

Atomic Safety and Licensing Board Panel
U. S. Atomic Energy Commission
Washington, D. C. 20545

SHAW, PITTMAN, POTTS & TROWBRIDGE

By


Jay E. Silberg
Counsel for Applicants

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