

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
METROPOLITAN EDISON COMPANY, <u>ET AL.</u>)	Docket No. 50-320
)	(EPICOR-II)
(Three Mile Island Nuclear Station,)	
Unit 2))	

NRC STAFF'S ANSWER TO PETITION TO INTERVENE
AND REQUEST FOR A HEARING BY THE
SUSQUEHANNA VALLEY ALLIANCE

On November 5, 1979, the Susquehanna Valley Alliance (SVA) filed a timely Petition to Intervene and Request for a Hearing (Petition) pursuant to the Commission's Memorandum and Order of October 16, 1979^{1/} and the Order for Modification of License dated October 18, 1979 (collectively, the Orders), and the Commission's Rules of Practice, specifically, 10 CFR § 2.714.

I. INTEREST

As provided by the Orders, 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).

^{1/} We presume that the reference to the "NRC Order of October 14 [sic], 1979", is intended to be to the Commission's Memorandum and Order of October 16, 1979.

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 should be given to the particularization of the above elements in connection with non-mandatory proceedings, such as the instant one, to assure that potential intervenors have the required interest to warrant a hearing. Cf. Cincinnati Gas & Electric Company, et al. (William H. Zimmer Nuclear Power Station) ALAB-305, 3 NRC 8, 12 (1976) (a case involving an operating license).

Clearly, an organization can establish standing through members of the organization who have interests which may be affected.^{2/} Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 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. Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1) ALAB-535, 9 NRC 377 (1979). Edlow International Company (Agent for the Government of India on Application to

^{2/} 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).

Export Special Nuclear Material) CLI-76-3, 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 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, 9 NRC 54 (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 foregoing, the SVA Petition merely contains the vague assertion that it is "a citizens group made up of residents of the Susquehanna River Valley, who use the river water for drinking, cooking, bathing, recreation and other purposes and who are endangered by any releases of radioactivity through any pathway from Three Mile Island." Absent identification of one or more SVA members (and what such members' interest may be) and their authorization to be represented by SVA in this proceeding, the Petition is defective insofar as demonstrating the requisite interest.

In regard to the requirements that a petition also show how such interest would be affected by the results of the subject proceeding, the Petition must also be found wanting. The stated effect on SVA's alleged interest appears to be the potential danger caused by "any releases of radioactivity through any pathway from Three Mile Island." The referenced Order of October 18, 1979, and, for that matter, the Commission's Memorandum and Order of October 16, 1979, do not authorize any releases from the Three Mile Island, Unit 2 facility; all that is permitted is the operation of the EPICOR-II system to decontaminate intermediate-level waste water and its storage on-site. Thus, SVA has not identified an effect on any interest resulting from the subject proceeding.

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(s) on which intervention is sought. This matter is presumably intended to be addressed by SVA's statements in paragraphs 3.a.-c. and 4 of its Petition.

The crux of SVA's position, set out in paragraph 4 of its Petition, urges the need to prepare "an Environmental Impact Statement regarding the entire clean-up of Unit 2 and restart of Units 1 and 2," based on the assertions set forth in paragraphs 3.a.-c.^{3/} Irrespective of the merits of the allegations contained in paragraph 3.a.-c., SVA's suggestion cannot be entertained by this Atomic Safety and Licensing Board since its jurisdiction is confined to those matters specified in the respective Orders by the Commission which are clearly limited to the operation of EPICOR-II.

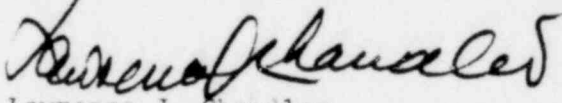
^{3/} The relationship between the assertions in a.-c. and the introductory contention of 3. is not readily apparent; even assuming, arguendo, that worker exposures resulting from the activities authorized by the Order were not adequately assessed and that off-site waste disposal facility may no longer be available, it does not perforce, follow, that the activities authorized are not "necessary", as SVA contends, to protect health and safety and minimize danger to life and property.

However, in spite of the foregoing, it would appear that paragraph 3.a.-c., if interpreted to challenge the sufficiency of the measures provided and the attendant impact on the environment, do suggest appropriate aspects of the proceeding on which intervention may appropriately be granted (subject to the cure of deficiencies regarding interest, discussed above).

III. CONCLUSION

Based on the foregoing, the Staff believes that although the SVA Petition is deficient, it appears readily amenable to being cured, and, subject thereto and to submission of a supplement as required by 10 CFR § 2.714(b), should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Lawrence J. Chandler", is written over the typed name.

Lawrence J. Chandler
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 14th day of November, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO PETITION TO INTERVENE AND REQUEST FOR A HEARING BY THE SUSQUEHANNA VALLEY ALLIANCE" 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 14th day of November, 1979:

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