

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of)	
)	
THE REGENTS OF THE UNIVERSITY)	Docket No. 50-142
OF CALIFORNIA)	(Proposed Renewal of
)	Facility License)
(UCLA Research Reactor))	

NRC STAFF'S RESPONSE TO PETITION TO INTERVENE
OF THE COMMITTEE TO BRIDGE THE GAP

I. Introduction

On April 25, 1980, the Nuclear Regulatory Commission (NRC) published in the Federal Register a notice of the proposed renewal of Facility License No. R-71, issued to the Regents of the University of California (licensee) for operation of a research reactor located on the licensee's campus at Los Angeles, California.^{1/} That notice stated that the NRC is considering the licensee's timely application to renew the operating license to extend its expiration date to March 30, 2000.

The notice provided that on or before May 27, 1980, the licensee could request a hearing or any person whose interest might be affected by the proposed license renewal could request a hearing by filing a written petition for leave to intervene. Petitions for leave to intervene were to be filed in accordance with 10 CFR § 2.714, setting forth:

^{1/} 45 F.R. 28028 (April 25, 1980).

- (1) the nature of the petitioner's right under the Atomic Energy Act to be made a party to the proceeding;
- (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; and
- (4) the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.^{2/}

The notice also provided that 15 days prior to the first prehearing conference held in the proceeding, petitioners should file supplements to their petitions to intervene which must include a list of the contentions which petitioners seek to have litigated and the bases for each contention set forth with reasonable specificity.

On May 22, 1980, a timely Petition for Leave to Intervene (Petition) was filed by the Campus Committee to Bridge the Gap (Petitioner), an organization composed of students, faculty and staff at UCLA and residents of the surrounding area. The Petition was filed on behalf of Petitioner's members generally and on behalf of a particular named individual. The NRC Staff's response to the Petition is set forth below. This response is limited to

^{2/} Id.

the issues of whether Petitioner satisfies the requirements of 10 CFR § 2.714 with regard to interest and the identification of aspects of the proceeding as to which intervention is sought.^{3/}

II. Discussion

A. Requirements for Intervention

The provisions of 10 CFR § 2.714 require that a petition to intervene set forth with particularity the interest of the petitioner in the proceeding, the manner in which that interest may be affected by the proceeding, and the aspect or aspects of the proceeding as to which intervention is sought.

With regard to interest and standing to intervene as-of-right, the Commission has established that contemporaneous judicial concepts of standing are to be applied in determining whether a petitioner should be admitted as a party to an NRC proceeding. Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976); Public Service Company of Oklahoma, et al. (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1144-45 (1977). Consequently, the petitioner must show that the proposed action which is the subject of the proceeding could

^{3/} The Staff does not, at this time, take any position with regard to the admissibility of concerns of the Petitioner as contentions in this proceeding. The Staff views Petitioner's statement of concerns set forth in the Petition as a statement of aspects as to which intervention is sought rather than a statement of contentions and bases. Under 10 CFR § 2.714(b), Petitioner has the opportunity to set forth specific contentions and the bases for them in a supplement to its Petition to be filed at least 15 days prior to the first prehearing conference. The Staff's view on the admissibility of contentions will be set forth in response to such supplement to the Petition for Leave to Intervene filed pursuant to Section 2.714(b).

result in "injury in fact"^{4/} to an interest which is "arguably within the zone of interest" protected by the Atomic Energy Act or the National Environmental Policy Act. Pebble Springs at 4 NRC 613-14.

Organizations generally are not clothed with independent standing to intervene in NRC licensing proceedings. Rather, any standing which an organization may possess is usually derivative in character. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390 (1979). It is clear that an organization can establish standing through members of the organization who have interests which may be affected by the licensing action under consideration. Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976). However, when an organization seeks to base its claim of standing on the interests of its members, the organization must identify specific individual members with the requisite interest, describe how the interests of those members might be affected, and show that each of those members has authorized the organization to act on his or her behalf. Allens Creek supra.

^{4/} "Abstract concerns" or a "mere academic interest" in the matter which are not accompanied by some real impact on the petitioner will not confer standing. Transnuclear, Inc., et al. (Ten Applications for Low-Enriched Uranium Exports to Euratom Member Nations), CLI-77-24, 6 NRC 525, 531 (1977); Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976). Rather, the asserted harm must have some particular effect on the petitioner, Transnuclear supra, and the petitioner must have some direct stake in the outcome of the proceeding. See Allied-General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976).

In this regard, an organization may satisfy the standing requirements of 10 CFR § 2.714 by showing that one of its members resides "within the geographical zone that might be affected by an accidental release of fission products," Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 at n.6 (1973)^{5/} or that a member's base of normal everyday activities is in the vicinity of the facility. Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974).^{6/} Similarly, the requisite interest can be established by showing that a member is a student who resides in the vicinity of the facility for at least a part of the year. See e.g., Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-102, 6 AEC 188, 189-90 (1973). See also Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 at n.4 (1977).

As noted above, a petition to intervene, in addition to setting forth the petitioner's interest and the potential effects of the proposed action on that interest, must identify the specific aspects of the proceeding on which

^{5/} The Appeal Board has recently held that geographical proximity of a member's residence to a facility is sufficient, standing alone, to satisfy 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, 56 (1979).

^{6/} A petitioner who resides at an appreciable distance from a nuclear facility but who frequently engages in substantial business and related activities in the vicinity of the facility may establish the requisite interest and standing. See Portland General Electric Company, et al. (Trojan Nuclear Plant), Order Concerning Requests for Hearing and Intervention Petitions (unpublished), July 27, 1978 and Portland General Electric Company, et al. (Trojan Nuclear Plant), ALAB-496, 8 NRC 308 (1978).

intervention is sought. The only relevant aspects of the proceeding are those which fall within the scope of the proceeding.^{7/} While there is little guidance as to the meaning of "aspect" as that term is used in 10 CFR § 2.714, it appears to be broader than a contention but narrower than a general reference to the NRC's operating statutes. Consumers Power Company (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978). In determining whether a petitioner has met the "aspects" requirement of Section 2.714, it is not appropriate to apply the same standards as those applied to determine the admissibility of contentions. Id. Thus, it appears that a petitioner may satisfy the "aspects" requirement by identifying generally potential effects of the licensing action which are of concern to the petitioner and which are within the scope of matters that may be considered in the proceeding.

Petitioner's right to intervene in the instant proceeding and the adequacy of its Petition should be examined in light of the foregoing principles.

B. Petitioner's Interest and Standing

Petitioner asserts that it is acting on behalf of its members who are students, faculty and staff at UCLA, where the research reactor which is the subject of the instant licensing action is located, or who are residents of

^{7/} See e.g., Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), Licensing Board "Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conferences" (September 21, 1979) (Restart), slip op. at 6.

the area surrounding UCLA.^{8/} Petitioner seeks to establish standing through the interests of the members it represents by alleging that such members attend classes, work and spend significant amounts of time in the buildings and areas in close proximity to the reactor (i.e., within 0 to 5 miles) and in areas directly affected by emissions from the reactor.^{9/} Petitioner further alleges that continued operation of the UCLA research reactor, as would be permitted by the proposed licensing action which is the subject of this proceeding, will subject Petitioner's members to significant radiation hazards from reactor accidents or failures and from normal operation, and thus cause injury-in-fact to such members.^{10/} In the Staff's view, such allegations are sufficient, in light of the principles with regard to interest and standing previously discussed, to establish that

- (1) members of Petitioner might suffer injury-in-fact from the proposed licensing action (since such members reside or conduct substantial activities in close proximity to the UCLA research reactor and could be directly affected by routine and non-routine emissions from the reactor); and
- (2) the interests of Petitioner's members in the protection of their health and safety from possible radiological hazards

^{8/} Petition, p. 1.

^{9/} Petition, pp. 1-2, paragraph 3; Points and Authorities in Support of Petition for Leave to Intervene (attached to Petition), p. A/1.

^{10/} Petition, p. 6, paragraph 6, p. 11, paragraph 18, p. 12; Points and Authorities in Support of Petition for Leave to Intervene, pp. A/1, A/2, A/4.

from continued operation of the UCLA research reactor are within the zone of interests protected by the Atomic Energy Act.

Accordingly, it is the Staff's view that Petitioner's members possess the requisite interest to intervene as-of-right in the instant proceeding.

Where, as here,

. . . an organization's standing hinges upon its being the representative of a member who has the requisite affected personal interest, it is obviously important that there be some concrete indication that, in fact, the member wishes to have that interest represented in the proceeding. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 396 (1979).

In such circumstances, the organization must "identify at least one member whose interest may be affected," and "show that, either directly or presumptively, the identified member has authorized [the organization] to represent his or her interests." Consumers Power Company (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108, 113 (1979). An allusion merely to members who live in close proximity to the reactor does not meet this requirement but a statement of the names and addresses of members residing or conducting substantial activities in the vicinity of the reactor who authorize the organization to represent them would be sufficient. Palisades, 10 NRC at

113-14. In the instant proceeding, Petitioner has specifically identified one member who appears to possess the requisite personal interest and has included in its Petition an affidavit in which that member avers that she is a student at UCLA, that she attends classes in a building adjacent to the UCLA research reactor facility which has caused her concern about exposure to radiation from the facility, and that she authorizes the Petitioner to represent her in the instant proceeding.^{11/} In the Staff's view, this satisfies the Allens Creek requirement that Petitioner identify at least one member with the requisite personal interest and provide a concrete indication that such member wishes to have that interest represented in the proceeding.

Based on the foregoing, it is the Staff's position that Petitioner has demonstrated that, through the interest of at least one of its members, it has the requisite interest and standing to intervene as-of-right in the instant proceeding.^{12/}

^{11/} Affidavit of Linda Huskey in Support of Petition for Leave to Intervene, March 21, 1980 (attached to Petition).

^{12/} In its "Points and Authorities in Support of Petition for Leave to Intervene," Petitioner argues that, based on a consideration of the factors set forth in Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-24, 4 NRC 610 (1976) with regard to discretionary intervention, Petitioner should be granted leave to intervene as a matter of licensing board direction. Discretionary intervention based on the Pebble Springs holding comes into play only in circumstances where standing to intervene as-of-right is not established. Duke Power Company (Oconee-McGuire), ALAB-528, 9 NRC 146, 148 at n.3 (1979). Because Petitioner clearly appears to have established its standing to intervene as-of-right, discretionary intervention need not and will not be addressed herein.

C. Aspects of the Proceeding As to Which Petitioner Seeks to Intervene

In its Petition for Leave to Intervene, Petitioner sets forth a number of allegations with regard to the operation of the UCLA research reactor which is the subject of the instant proceeding. Specifically, Petitioner asserts:

- (1) that the concentration of Argon-41 emissions from the reactor exhaust stack exceeds the maximum permissible concentration of 10 CFR Part 20, that the licensee has not made reasonable efforts to reduce or disperse those emissions, and that such emissions are of significance because of the proximity of the exhaust stack to a classroom building (Petition, pp. 2-3);
- (2) that the NRC has, in the past, granted to the licensee an exemption from the regulations with regard to emissions although the standards for granting such an exemption were not met (Petition, pp. 3-4);
- (3) that licensee's monitoring systems are so inadequate that it cannot be ensured that no individual will be exposed to radioactive emissions in excess of those permitted by 10 CFR Part 20 (Petition, pp. 4-5);
- (4) that the reactor has been operated in the past and is being operated at present in violation of the requirement that radioactive releases be kept "as low as reasonably achievable" (Petition, pp. 5-6);

- (5) that the reactor itself, based on a history of minor accidents and an alleged lack of adequate seismic qualification, is unsafe and presents a danger of significant radiation hazards from accidents or failures (Petition, pp. 6-7);
- (6) that because of the reactor's age and antiquated design, replacement parts are difficult to find, equipment does not function properly, and the reactor cannot be operated and maintained properly (Petition, p. 7);
- (7) that the site of the reactor in an area of high population density presents unacceptable risks (Petition, p. 7);
- (8) that the licensee's past record of non-compliance with regulations evidences substandard supervision and safety practices, the effects of which are exacerbated by inadequate safety systems (Petition, p. 7);
- (9) that the hazards analysis for the reactor is outdated and inadequate to support the proposed license renewal (Petition, p. 8); and
- (10) that the large number of unscheduled shutdowns and problems with important reactor components in the past raises questions about the safety of future operation (Petition, p. 10).

There is no apparent nexus between item (2) (past grant of an exemption from certain regulatory requirements) and the proposed renewal of the facility license which is the action involved in this proceeding. Thus, item (2) does not appear to be a matter within the scope of this proceeding and would not satisfy the "aspects" requirement of 10 CFR § 2.714.

Items (1), (3), (4), (5) and (8) are allegations regarding past and, in some instances, current operation and operating practices for the UCLA research reactor. While it is not stated explicitly by Petitioner, the implication of these allegations is that such operation and practices will continue in the future if the license is renewed as requested by the licensee and that such operation would be unsafe. If this implication is intended, these allegations would, in the Staff's view, identify aspects which could be within the scope of matters to be considered in a license renewal proceeding.

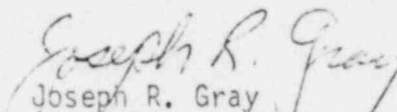
Of the remaining allegations, those matters raised in items (6), (9) and (10) above identify concerns with regard to the age of the reactor, the existing safety analysis supporting operation and past problems with reactor components, all of which assertedly indicate that continued operation as requested by the licensee in its application for license renewal would be unsafe. Such matters would clearly be within the scope of matters to be considered in a license renewal proceeding. While the allegations in items (6), (9) and (10) above are general in nature and do not exhibit the specificity that would be required in contentions, it is the Staff's view that they adequately identify "aspects" within the scope of the proceeding as to which

intervention is sought. Accordingly, it is the Staff's position that Petitioner has satisfied the "aspects" requirement of 10 CFR § 2.714.^{13/}

III. Conclusion

Based on the foregoing, the Staff concludes that Petitioner satisfies the interest and "aspects" requirements of 10 CFR § 2.714. In the event that Petitioner ultimately satisfies the contention requirement of 10 CFR § 2.714(b), Petitioner's request for hearing should be granted and Petitioner should be admitted as a party to the proceeding.

Respectfully submitted,


Joseph R. Gray
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 11th day of June, 1980

^{13/} In taking this position, the Staff expresses no view as to the validity or merits of Petitioner's allegations. In addition, while Petitioner, in some instances, characterizes its allegations as contentions, the Staff, as previously mentioned, takes no position at this time on the admissibility of any such "contentions." Rather, the Staff's statement of position on contention admissibility will be submitted subsequent to Petitioner's filing of formal contentions pursuant to 10 CFR § 2.714(b).

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of)	
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA)	Docket No. 50-142
(UCLA Research Reactor))	(Proposed Renewal of Facility License)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S RESPONSE TO PETITION TO INTER- VENE OF THE COMMITTEE TO BRIDGE THE GAP" 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 11th day of June, 1980:

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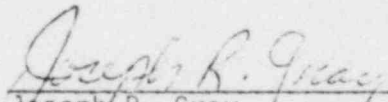
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