

1/29/81



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD PANEL

In the Matter of	)	
TENNESSEE VALLEY AUTHORITY	)	Docket Nos. 50-259, 50-260 and
(Browns Ferry Nuclear Plant,	)	50-296
Unit Nos. 1, 2, and 3)	)	(License amendment to
	)	permit onsite storage of
	)	low level radioactive waste)

NRC STAFF'S RESPONSE TO PETITION FOR LEAVE TO INTERVENE AND  
REQUEST FOR HEARING OF DAVID R. AND UVONNA J. CUROTT, THOMAS W. PAUL,  
RICHARD W. JOBE, MARJORIE L. HALL, BETTY L. MARTIN, GREGORY R. BROUGH,  
MICHAEL D. PIERSON, DAVID ELY, DEBBIE HAVAS, NANCY MUSE, RICHARD L. FREEMAN,  
ALICE N. COLOCK, JOHN R. MARTIN, NOEL M. BECK, AND ROBERT W. BECK

I. INTRODUCTION

On December 11, 1980, the Nuclear Regulatory Commission (NRC) published in the Federal Register a notice of the proposed amendment of Facility Operating License Nos. DPR-33, DPR-52, and DPR-68, issued to Tennessee Valley Authority (Licensee), for Browns Ferry Nuclear Plant, Unit Nos. 1, 2, and 3, located in Limestone County, Alabama.<sup>1/</sup> That notice stated that the NRC is considering Licensee's application to store onsite the low level radioactive waste generated from operation of the Browns Ferry Plant for a period of five years.

1/ 45 F.R. 18697 (December 11, 1980).

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The notice provided that by January 12, 1981, Licensee could request a hearing or any person whose interest might be affected by the proposed license amendment could request a hearing by filing a written petition for leave to intervene. The notice also requested that a petitioner or representative of the petitioner promptly inform the NRC by a toll-free call to Western Union if such petitioner filed a request for a hearing or a petition for leave to intervene during the last ten (10) days of the notice period.

Petitions for leave to intervene were to be filed in accordance with 10 C.F.R. § 2.714, setting forth:

- (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.<sup>2/</sup>

On December 12, 1980, four Western Union Datagrams were received at the NRC which provided the information requested in the Federal Register notice. These datagrams were sent by John R. Martin, David Curott, Betty L. Martin, and Nancy Muse. The NRC Staff also received telephone calls from Thomas W. Paul and Hollis Fenn.<sup>3/</sup>

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<sup>2/</sup> Id.

<sup>3/</sup> Although Mr. Fenn called the Staff indicating his intent to submit something, none of the petitions received by the Staff were signed by Mr. Fenn.

On January 15 and 16, 1981, the NRC Staff received five identical "Petition[s] for Leave to Intervene and Request[s] for Hearing" (Petitions). The first Petition was signed by David R. and Uvonna J. Curott, the second by Thomas W. Paul, Richard W. Jobe, and Marjorie L. Hall, the third by Betty L. Martin, Gregory R. Brough, Michael D. Pierson, David Ely, and Debbie Havas, the fourth by Nancy Muse, Richard L. Freeman, and Alice N. Colock, and the fifth by John R. Martin, Noel M. Beck, and Robert W. Beck (Petitioners). The Staff's response to these Petitions is set forth below.<sup>4/</sup> This response is limited to the issues of whether Petitioners have satisfied the requirements of 10 C.F.R. § 2.714 with regard to (1) interest and effect thereon and (2) the identification of aspects of the proceeding as to which intervention is sought.

## II. DISCUSSION

### A. Interest and Standing

#### 1. General principles of law

It is axiomatic that a petition for leave to intervene must comply with the requirements of 10 C.F.R. § 2.714. That rule provides that the petition must set forth with particularity the interest of the petitioner and must demonstrate how that interest may be affected by the results of the proceeding. In considering the petition, the Licensing Board should take into account (a) the nature and extent of the petitioner's right to be made a party,

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<sup>4/</sup> As all five petitions are identical except for their signature by different persons, the Staff has elected to consolidate its response to them in one document.

(b) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (c) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. 10 C.F.R. § 2.714(a)(2) and § 2.714(d); Washington Public Power Supply System (WPPSS Nuclear Projects, Nos. 3 and 5), LBP-77-16, 5 NRC 650 (1977).

As a general matter, it is well established that judicial concepts of standing should be applied in determining whether or not a petitioner is entitled to intervene as of right. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-26, 4 NRC 610, 613-14 (1976). These judicial concepts require a showing (a) that the action being challenged could cause injury-in-fact to the person seeking to establish standing, and (b) that the injury is arguably within the zone of interests protected by the statutes governing the proceeding. Sierra Club v. Morton, 405 U.S. 717 (1972); Barlow v. Collins, 397 U.S. 159 (1970); Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970); Pebble Springs, supra; Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98 (1976).

Various factors have been held to be sufficient to establish the requisite standing. The Commission has recognized that sufficient interest may be demonstrated by claims that the petitioner lives within the geographical zone which might be affected by the normal or accidental release of fission products from the facility in question as a result of the proposed licensing action. Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 n.6 (1973); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC

188 (1973). In this regard, it has been held that residence within proximity of a nuclear reactor site clearly falls within the geographical zone and is, by itself, sufficient to establish the requisite interest. Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station), ALAB-535, 9 NRC 377, 393 (1979); accord, Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1976). While no outer limits of the geographical zone have been established, it has been held that 50 miles "is not so great as necessarily to have precluded a finding of standing based upon residence." Tennessee Valley Authority (Watts Bar Nuclear Generating Station, Unit 1), ALAB-413, 5 NRC 1418, 1421 n.4 (1977). Similarly, it has been held that the pursuit of everyday activities in the vicinity of a reactor site is sufficient to establish interest. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 (1974). Use of the area surrounding a reactor site for recreational purposes is also sufficient, in appropriate circumstances, to establish the requisite interest. Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-73-10, 6 AEC 173 (1973).<sup>5/</sup>

2. The five petitions

When the foregoing principles are applied to the instant Petitions, it appears that Petitioners have demonstrated the standing and interest required

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<sup>5/</sup> The Staff notes that most of the cases which discuss the issue of distance from the facility involved the licensing of nuclear reactors. While the action at issue in the instant case is the proposed amendment of operating licenses, the Staff has adopted the analysis found in the reactor licensing cases.

by 10 C.F.R. § 2.714. Although Petitioners do not indicate the precise distances from the facility to their homes or work locations, it would appear that they live in fairly close proximity to the plant site.<sup>6/</sup> They list addresses in the cities of Florence, Huntsville, and Sheffield, Alabama. According to the 1979-80 Official Alabama Highway Map, Florence is approximately 33 miles west of the facility, Huntsville is approximately 31 miles east of the facility, and Sheffield is approximately 33 miles west of the facility.<sup>7/</sup> Further, Petitioners assert that granting the proposed license amendment might increase the health and safety risks to Petitioners by increasing the on-site radioactive inventory and by increasing the risk of radioactive contamination.<sup>8/</sup> In the Staff's view, such allegations are sufficient, in light of the applicable principles discussed above, to establish that

- (1) Petitioners might suffer injury-in-fact from the proposed action and
- (2) the interests of Petitioners in the protection of their health and safety from possible radiological hazards which might flow from the proposed action are within the zone of interests protected by the Atomic Energy Act.

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<sup>6/</sup> Petitions at 2 and 4.

<sup>7/</sup> While the Petitions further state that Petitioners are "resident[s] and/or property owner[s] in the geographic area in close proximity to the Browns Ferry Nuclear Plant," the Petitions do not indicate specifically where that property might be.

<sup>8/</sup> Petitions at 3.

Accordingly, it is the Staff's view that Petitioners possess the requisite interest to intervene as a matter of right in the instant proceeding.

B. Aspects of the Proceeding As to Which Petitioners Seek to Intervene

1. General points of law

In addition to setting forth the petitioner's interest and the potential effects of the proposed action on that interest, a petition to intervene must identify the specific aspects of the proceeding on which intervention is sought. The only relevant aspects are those which fall within the scope of the action being considered in the proceeding.<sup>9/</sup> While this requirement has not yet been discussed extensively in NRC case law, 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 the basic areas of the licensing action which concern the petitioner and which are within the scope of matters that may be considered in the proceeding. Accordingly, if the "aspects" requirement is interpreted and applied in such a way as to require that the Licensing Board and the parties

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<sup>9/</sup> 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.

be put on notice of the areas in which petitioners intend to raise contentions, then the Licensing Board and the parties will be able to determine if the matters raised in a petition are within the scope of the proceeding.

2. The five petitions

In the instant Petitions, Petitioners have expressed their desire "to intervene in all aspects of TVA's request for amendments to Facility Operating License Nos. DPR-33, DPR-52, and DPR-68."<sup>10/</sup> While Petitioners have established their interests and the potential effect of the proposed action on those interests, as discussed above, the bald statement that Petitioners wish to intervene in all aspects of the proceeding, without more, does not satisfy the requirement of 10 C.F.R. §2.714 that the specific aspects of the proceeding as to which intervention is sought be identified. Petitioners must identify those aspects of the licensing action and what they believe the potential impacts are so as to indicate Petitioners' concerns. Further, Petitioners must put the Licensing Board and the parties on notice regarding the basic areas in which Petitioners intend to raise concerns. The Staff is unable to determine, from the face of the Petitions what aspects of the proposed action are of concern to Petitioners, what areas Petitioners intend to raise contentions in, and thus whether the Petitioners intend to raise contentions within the scope of the proceeding. For these reasons, the Staff believes that the instant Petitions, by merely stating Petitioners' desire to participate in all aspects of the proceeding, fail to satisfy the

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<sup>10/</sup> Petitions at 1-2.

requirement of 10 C.F.R. § 2.714 that Petitioners set forth with particularity the specific aspects of the subject matter of the proceeding as to which intervention is sought.

C. Amendment of Petition to Intervene

While the Staff believes Petitioners have not satisfied the "aspects" requirement of 10 C.F.R. § 2.714, the Staff notes that 10 C.F.R. § 2.714(a)(3) specifically provides for the amendment of a petition for leave to intervene. This section permits amendment of a petition, such as those filed in the instant case, up to fifteen (15) days prior to the holding of the first prehearing conference without prior approval of the presiding officer. Such an amended petition for leave to intervene must satisfy the requirements of 10 C.F.R. § 2.714(a)(1) pertaining to specificity. The Staff believes that it would be appropriate, in accordance with this regulation, for Petitioners to cure the above-mentioned defect by identifying the specific aspects of the proceeding as to which intervention is sought.

III. CONCLUSION

Based on the foregoing, the Staff concludes that Petitioners satisfy the interest requirement of 10 C.F.R. § 2.714 but do not satisfy the "aspects" requirement of that section. Thus, the Staff concludes that the Petitioners should amend their Petitions in such a way as to satisfy the "aspects" requirement of 10 C.F.R. § 2.714. Subject to such amendment, and the subsequent submission of at least one good contention (10 C.F.R. § 2.714(b)), the

Staff believes that Petitioners should be admitted as parties to this proceeding and a notice of hearing issued.

Respectfully submitted,

*Jessica H. Laverty*  
Jessica H. Laverty  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 28 day of January, 1981.

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Unit Nos. 1, 2, and 3)	)	(License amendment to
	)	permit onsite storage of
	)	low level radioactive waste)

CERTIFICATE OF SERVICE

I hereby certify that copies of, "NRC STAFF'S RESPONSE TO PETITION FOR LEAVE TO INTERVENE AND REQUEST FOR HEARING OF DAVID R. AND UVONNA J. CUROTT, THOMAS W. PAUL, RICHARD W. JOBE, MARJORIE L. HALL, BETTY L. MARTIN, GREGORY R. BROUGH, MICHAEL D. PIERSON, DAVID ELY, DEBBIE HAVAS, NANCY MUSE, RICHARD L. FREEMAN, ALICE N. COLOCK, JOHN R. MARTIN, NOEL M. BECK, AND ROBERT W. BECK", dated January 28, 1981, 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 28th day of January, 1981:

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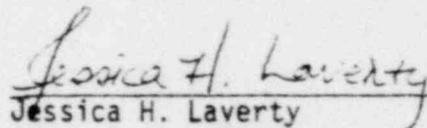
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