1/27/81

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
TENNESSEE VALLEY AUTHORITY	)	Docket Nos. 50-259
	)	50-260
(Browns Ferry Nuclear Plant,	)	50-296
Units 1, 2, and 3)	)	

APPLICANT'S REPLY TO PETITIONS FOR LEAVE TO INTERVENE AND REQUESTS FOR A HEARING

STATEMENT AND SUMMARY

This is a proceeding concerning amendments to the outstanding operating licenses for applicant Tennessee Valley Authority's (TVA) Browns Ferry Nuclear Plant, Unit Nos. 1, 2, and 3. The amendments will authorize the onsite storage, for up to five years, of low-level radwaste generated by the normal operation of the plant. The application, and associated materials filed with it, demonstrate that total radiation doses attributable to the facility for which permission is sought will be inconsequential. Even at the boundaries of the site, the low-level wastes stored in the planned facility will not contribute measurably to the level of background radiation already present.

A Notice of Consideration of Amendments to Facility Operating Licenses was issued by the Nuclear Regulatory Commission on December 11,

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1980, 45 Fed. Reg. 81,697. Four identical petitions for leave to intervene and requests for a hearing have been filed by various citizens residing in the Alabama communities of Florence, Huntsville, and Sheffield.[1] The petitioners allege that they have an interest in the proceeding based generally on their status (1) as residents and property owners in close geographical proximity to the plant; (2) as customers for power from several municipal or cooperative electrical systems, each of which purchase and obtain its electricity from TVA; (3) as users of water and air "which may be affected by the proceeding"; and (4) as consumers of foodstuffs, both animal and vegetable, "grown and raised in close proximity to the Browns Ferry Nuclear Plant." The petitioners all contend that the granting of license amendments <u>may</u> increase health and safety risks to them and their descendants by (1) "increasing the on-site radioactive inventory and the risk of radioactive contamination to them and their descendants"; (2) "increasing the risk of fire"; (3) increasing the risk of air contamination and water pollution; and (4) increasing the risk of unspecified "other dangers" to petitioners and their descendants.

The petitions are defective. They fail to meet the requirements for intervention specified in section 189 of the Atomic Energy

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1 The signers of the petitions are: John R. Martin (Sheffield, Alabama), Noel M. Beck (Florence, Alabama), Robert W. Beck (Florence, Alabama), Betty L. Martin (Sheffield, Alabama), Greg Brough (Huntsville, Alabama), Michael D. Pierson (Huntsville, Alabama), David Ely (Huntsville, Alabama), Debbie Havas (Huntsville, Alabama), Nancy Muse (Florence, Alabama), Richard L. Freeman (Florence, Alabama), Alice N. Colcock (Sheffield, Alabama), and David R. and Ivonna Curott (Florence, Alabama).

Act, 42 U.S.C. § 2239 (1976), and set out in section 2.714 of the Commission's Rules of Practice, 10 C.F.R. § 2.714 (1980). The Rules of Practice require that, among other things, the petitioners must establish: (1) the nature of the petitioners' right under the Atomic Energy Act to be made a party to the proceeding; (2) the nature and extent of the petitioners' property, financial or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioners' interest. 10 C.F.R. § 2.714(d). The petitions here fail to demonstrate sufficient interest in the proceeding to justify intervention, either as of right or in the discretion of the Commission. Accordingly, TVA respectfully requests that all of the petitions for leave to intervene be denied.[2]

ARGUMENT

I

Petitioners Have No Standing To Intervene.

The Atomic Energy Act provides that the Commission "shall grant a hearing upon the request of any person whose interest may be affected [by the grant of a license amendment] and shall admit any such person as a party to such proceeding." Section 189 of the Atomic

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2 A pleading which is insufficient to support the granting of intervenor status will not be sufficient to trigger a hearing. 10 C.F.R. § 2.714(a)(1). See In re Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977).

Energy Act of 1954, as amended, 42 U.S.C. § 2239 (1976). In order to establish a sufficient interest under the Act to support such intervention, a petitioner must satisfy the familiar principles of standing, often articulated by the courts and the administrative agencies. A petitioner must "allege that he has been or will in fact be perceptibly harmed by the challenged agency action, not that he can imagine circumstances in which he could be affected by the agency's action." United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 688-89 (1973).

In Portland Gen. Elec. Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976), the Commission outlined the requirements of standing to intervene in a licensing proceeding and stated that the test of standing applied by the courts also applies to commission proceedings. The Commission held that to satisfy the requirements of standing a petitioner must show (a) injury in fact, and (b) that the injury is arguably within the zone of interests protected by statute. Id. See also In re Consumers Power Co. (Palisades Nuclear Plant), LBP-79-20, 10 NRC 108 (1979).

When each of the petitioners' several allegations of interest is examined, the insufficiency of the allegations to meet the test of standing is clear. First, petitioners' claim that they are consumers of power purchased from TVA through local distribution systems does not establish standing. The mere economic concerns of ratepayers are not within the zones of interest protected by the Atomic Energy Act. Portland Gen. Elec Co., supra, 4 NRC 613-14. In fact, the Atomic

Licensing and Appeal Board considered precisely the same issue in another proceeding involving TVA and reached the same conclusion. In re Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-415, 5 NRC 1418, 1421 (1977).

Second, the petitioners' allegations of injury based on radioactivity from proposed facility are insufficient. The present operating license allows the production, collection, processing, storage, packaging, and shipment of low-level radioactive waste generated at the plant. The amendment applied for would simply permit TVA to store the low-level waste on the site for up to five years, rather than shipping it to a disposal facility as presently contemplated. TVA's application does not in any way involve the operation of the nuclear plant itself and the amendment would thus have no effect on plant operation or its previously determined environmental impacts. The quantity of radioactive material and potential radiation doses to members of the public as a result of the proposed intermediate-term onsite storage of low-level radwaste are several orders of magnitude smaller than the potential public exposure due to plant operation (which are themselves small as compared with natural background radiation). The proposed storage facility will not produce additional levels of radiation significant from a health and safety standpoint on the plant site, or at its boundaries. Because the levels of radiation at the plant site will be so low as to cause no concern for public health and safety, it is obvious that persons situated 30 miles from the site, such as the petitioners, have no demonstrable basis in fact

to fear harm, and thus have no claim to standing. The present situation is factually different from that in the decisions that hold that mere geographical proximity to a power reactor is sufficient to establish standing in a power reactor licensing proceeding. See, e.g., In re Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 193 (1973).

The petitioners' other allegations of possible interests that could be affected by the amendment (e.g., increasing the risk of fire, or loss of property value) completely lack the required specificity under the Commission's rules. Accordingly, the petitioners have failed to establish standing as a matter of right with respect to any of their alleged interests in the proceeding.

II

Petitioners Should Not Be Granted Intervention as a Matter of Discretion.

Finally, this is not a case where petitioners should be permitted to intervene as a matter of administrative discretion. In determining whether to permit discretionary intervention, the foremost factor for consideration is whether such participation is likely to produce a valuable contribution to the decisionmaking process. See Portland Gen. Elec. Co., supra, 4 NRC 617. See also In re Pub. Serv. Co. of Okla. (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143 (1977). There is no allegation that petitioners have access to special

knowledge or expertise. Further, the petitions make no reference to the particular engineering or environmental details of TVA's application. They offer no comments directed to any design or operational aspects of the proposal; thus there is no reason to believe that their participation will be especially valuable, or even useful. This is especially so, since the Commission has indicated that it will give ample consideration to the health and safety aspects of the proposed plan in order to protect all of the legitimate interests of the residents in the vicinity of the plant. See, e.g., letter, T. A. Ippolito, Chief, Operating Reactors Branch No. 2, Division of Licensing, Nuclear Regulatory Commission, to Hugh G. Parris, Manager of Power, TVA (December 5, 1980) (copy attached).

An adjudicatory hearing in this motion would only serve to delay the project, without protecting the interests of the public. Because of the growing shortage of commercial offsite storage sites for low-level wastes, TVA's onsite storage facility could be critical to the continued normal operation of the Browns Ferry Nuclear Plant. Indeed, if commercial storage sites become unavailable in the next few years, it is even more important that this storage activity not be delayed.

CONCLUSION

These petitioners have not alleged facts which would show that their health, safety, property, or any other judicially recognized

interest will be affected by the operation of the facility for which permission is sought. Accordingly, the Atomic Energy Act does not permit their intervention as parties to this proceeding, nor require an adjudicatory hearing.

For the reasons given and upon the authorities cited, the petitions for leave to intervene and requests for a hearing should be denied.

Respectfully submitted,

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Knoxville, Tennessee
January 27, 1981

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 5, 1980

POOR ORIGINAL

Docket Nos. 50-259
50-260
and 50-296

Mr. Hugh G. Parris
Manager of Power
Tennessee Valley Authority
500A Chestnut Street, Tower II
Chattanooga, Tennessee 37401

Dear Mr. Parris:

We have received your application of July 31, 1980, as amended by your letter of November 17, 1980 for amendments to the licenses for Browns Ferry Unit Nos. 1, 2, and 3 to authorize onsite low-level waste storage at Browns Ferry for a period of five years. We note in Enclosure 3 to your submittal that construction work on the storage facility is in progress. Your letter of November 17, 1980, requested that we publish in the Federal Register a notice concerning your application. Enclosed is a copy of the "Notice of Consideration of Amendments to Facility Operating Licenses" for the Browns Ferry Nuclear Plant, Unit Nos. 1, 2, and 3, which we have sent to the Office of the Federal Register regarding your application of July 31, 1980 as amended by your letter of November 17, 1980.

Your application entails amendment of the Part 30 portion of your reactor license authorizing possession of byproduct waste material in accordance with the license and supporting application. In this connection, the NRC Staff will have to assess the significance of potential environmental impacts to determine whether the provisions of 10 CFR §30.32(f) are or should be applicable to your program. In order to minimize any delay in such determination, I anticipate that our staff will need to meet with your staff to obtain supporting information, in the very near future. We will contact Mr. Larry Mills of your staff to establish a convenient meeting schedule. In the meantime, however, TVA continues construction at its own risk.

Sincerely,

Thomas A. Ippolito, Chief
Operating Reactors Branch #2
Division of Licensing

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Enclosure:
As Stated

cc w/enclosure:
See next page

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