

March 20, 1981

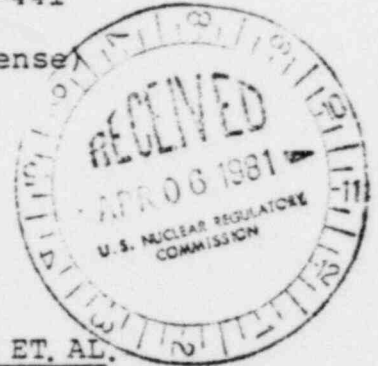
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of)
)
THE CLEVELAND ELECTRIC)
ILLUMINATING COMPANY)
DUQUESNE LIGHT COMPANY)
OHIO EDISON COMPANY)
PENNSYLVANIA POWER COMPANY)
THE TOLEDO EDISON COMPANY)
)
(Perry Nuclear Power Plant)
Units 1 and 2)

Docket Nos. 50-440
50-441

(Operating License)



APPLICANTS' ANSWER TO PETITION FOR
LEAVE TO INTERVENE BY SUNFLOWER ALLIANCE, INC. ET. AL.

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company ("Applicants") hereby submit their answer to the Petition for Leave to Intervene filed by Sunflower Alliance, Inc., Northshore Alert, Evelyn Stebbins, Richard Sering, David Nash, Gail Caduff Nash, Linda Qualls, David Qualls, Citizens for Safe Energy, Jenny Steindam, Harold Steindam, Wes Gerlosky, Margaret Gerlosky, William Brotzman, Grand River Winery, Cumings Homsted Park Corp., and Toledo Coalition for Safe Energy ("Petitioners") dated March 15, 1981. In accordance with the guidance provided in Section 2.714(a)(2) of the Commission's Rules of Practice (10 C.F.R. § 2.714(a)(2)), Applicants answer is confined to the adequacy of the petition from the standpoint of Petitioners' showing of interest and identification of the aspect or aspects of the proceeding as to which intervention is sought.

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Applicants' position is that the petition adequately sets forth the interest in the proceeding of the individual-Petitioners, and of the two business-Petitioners (Grand River Winery and Cumings Homsted Park Corp.), and describes sufficiently at least one specific aspect of the subject matter of the proceeding in which they wish to intervene. Thus Applicants do not challenge the showing of interest for David Nash, Gail Caduff Nash, Linda Qualls, David Qualls, Jenny Steindam, Harold Steindam, Wes Gerlosky, Margaret Gerlosky, William Brotzman, Grand River Winery and Cumings Homsted Park Corp. based on the petition's presentation that all are individuals or businesses which reside or are located within a ten mile radius of the Perry Nuclear Power Plant. Similarly, Applicants do not challenge the showing of interest of Evelyn Stebbins and Richard Sering, based on the petition's representation that these individuals live in Cuyahoga County (whose farthest point is about 50 miles from the Perry site).

With respect to the organization-Petitioners, Applicants believe that Sunflower Alliance, Inc., Northshore Alert, Citizens for Safe Energy, and Toledo Coalition for Safe Energy have not adequately specified their interests and respectfully request that they be denied status as intervenors in this proceeding.

Under Section 189(a) of the Atomic Energy Act (42 U.S.C. § 2239(a)) and the Commission's Rules of Practice (10 C.F.R. § 2.714(a)), a petitioner seeking to intervene must assert an "interest [which] may be affected by" that proceeding. See also 10 C.F.R. § 2.714(d)(1)-(3). The Commission and its licensing and appeal boards have consistently ruled that, in determining whether such an interest has been sufficiently alleged, contemporaneous judicial concepts of standing are to be applied. Specifically, a petitioner for intervention must allege both (1) an "injury that has occurred or will probably result from the action involved" and (2) an interest "arguably within the zone of interests" to be protected or regulated. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 N.R.C. 610, 613-14 (1976); Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 N.R.C. 1143, 1144-45 (1977); Nuclear Engineering Co. (Sheffield, Ill. Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 N.R.C. 737, 739-40 (1978).

An organization can establish such standing through its members whose interests may be affected. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 N.R.C. 328, 330 (1976). However, specific members of the organization must then be identified, how their individual interests may be affected must be shown, and the members' authorization to the organization must be stated. Edlow

International Co. (Application to Export Special Nuclear Material), CLI-76-6, 3 N.R.C. 563, 574 (1976); Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 N.R.C. 420, 422 (1976).

In Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 N.R.C. 377 (1979), a petitioner failed to identify at least one member whose interest might be affected by the proceeding. The licensing board denied intervention on the ground that the petitioner had failed to establish its standing. Id. at 389. The Appeal Board affirmed, stating in part (id. at 390):

[O]rganizations * * * are not clothed with independent standing to intervene in NRC licensing proceedings. Rather, any standing which [such organizations] may possess is wholly derivative in character. It must appear [from the petition] that at least one of the persons it purports to represent does in fact have an interest which might be affected by the licensing action being sought * * *.

Satisfying this standard requires that at least one member of the organization be identified specifically (id. at 392, 393-94), and, with respect to that member, there be an explicit description of the nature of the invasion of the personal interest which might flow from the proposed licensing action (id. at 392-93). Such specificity is necessary in order to verify the assertion that such a member exists. As the Appeal Board noted (id. at 393):

[B]oth the Board and the other parties were entitled to be provided with sufficient information to enable them to determine for themselves, by independent inquiry if thought warranted, whether a basis existed for a formal challenge to the truthfulness of the assertions in the * * * petition. [Emphasis in original.]

Thus, as to Sunflower Alliance, Inc., Northshore Alert, Citizens for Safe Energy and Toledo Coalition for Safe Energy, the petition is defective. The petition only asserts generally that the Sunflower Alliance, Inc. is composed of "residents of Ohio who live and work and own property in Lake and Ashtabula Counties, Ohio." We are told that Northshore Alert is an "association of individuals residing in Cuyahoga, Lake, Ashtabula, Portage and Summit Counties, Ohio." Similarly the petition only states that Citizens for Safe Energy is a "membership based organization with members living, working and owning property in Cuyahoga and Lake Counties, Ohio." And, with respect to Toledo Coalition for Safe Energy, the petition admits the individuals represented by this unincorporated association live in northwest Ohio "not in [the Perry Nuclear Power Plant's] geographical territory." No individual member of any one of the four organizations is identified nor is the interest of any individual set forth with particularity as to how he/she might be adversely affected by the operation of the Perry Nuclear Power Plant.

Furthermore, from the facts alleged by the petition regarding the members of Toledo Coalition for Safe Energy, the stated interest of its members is outside of the zone of interests sought to be protected or regulated. The petition alleges that the adverse impact to Toledo Coalition's members is the "drain of capital" invested by the Toledo Edison Company in the Perry Nuclear Power Plant that "will not be available for useful purposes in the service area of the Toledo Edison Company." Thus, the petition suggests, "[t]his will adversely affect the members of the Toledo Coalition for Safe Energy because the drain of capital from the area will lessen the ability of northwest Ohio to attract economic development."

However, it is settled Commission law that alleged economic injury does not confer standing to intervene as a matter of right in Commission proceedings. See, e.g., Portland General Electric Co., supra, 4 N.R.C. at 614; Public Service Company of Oklahoma, supra, 5 N.R.C. at 1146; Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 N.R.C. 473, 476 (1978); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 N.R.C. 1418, 1420-21 (1977); Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-376, 5 N.R.C. 426, 428 (1977); Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 N.R.C. 760, 795 at n. 75 (1977). In the above cited decisions, petitioners were denied intervention because an asserted injury

as ratepayers or taxpayers was not sufficient to allow standing. The economic injury being advanced here by the Toledo Coalition -- a hypothetical drain of capital from the area -- is even more remote and speculative and, following the logic of the above cited decisions, more clearly outside of the zone of interest necessary to confer standing to intervene.

For the reasons set forth above, Applicants submit that Sunflower Alliance, Inc., Northshore Alert, Citizens for Safe Energy and Toledo Coalition for Safe Energy should be denied status as intervenors in the instant proceeding.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

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Dated: March 20, 1981

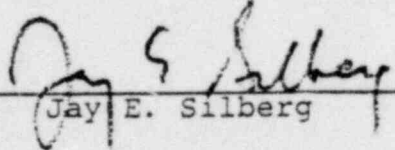
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicants' Answer To Petition For Leave To Intervene By Sunflower Alliance, Inc. et.al." were served upon those persons on the attached Service List by deposit in the United States mail, postage prepaid, this 20th day of March, 1981


Jay E. Silberg

Dated: March 20, 1981

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