

October 10, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
UNION ELECTRIC COMPANY )  
 )  
(Callaway Plant, Units 1 and 2) )

Docket Nos. STN 50-483 OL  
STN 50-486 OL

APPLICANT'S ANSWER TO THE JOINT PETITION  
TO INTERVENE OF COALITION FOR THE  
ENVIRONMENT, ST. LOUIS REGION, MISSOURIANS  
FOR SAFE ENERGY, CRAWDAD ALLIANCE AND KAY DREY

In response to the NRC's notice of Receipt of Application for Facility Operating Licenses, Consideration of Issuance of Facility Operating Licenses, and Notice of Opportunity for Hearing, published at 45 Fed. Reg. 56956 (August 26, 1980), the Coalition for the Environment, St. Louis Region, Missourians for Safe Energy, Crawdad Alliance and Kay Drey filed on September 25, 1980, a "Joint Petition to Intervene." Pursuant to 10 C.F.R. § 2.714(c), Applicant submits this answer to the joint petition.

The requirements for petitions for leave to intervene are set forth at 10 C.F.R. § 2.714, and were described in the above-cited notice. One requirement is that the petition shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in § 2.714(d). 10 C.F.R. § 2.714(a)(2). Those

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factors are: (1) the nature of the petitioner's right under the 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; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. 10 C.F.R. § 2.714(d).

These requirements collectively are referred to as those necessary to demonstrate the "interest" or "standing" of persons seeking leave to intervene in Commission proceedings.<sup>1/</sup> It is settled that the Commission will apply judicial concepts of standing to determine hearing and intervention rights under Section 189a of the Atomic Energy Act. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 N.R.C. 438, 439 (1980). To acquire standing to request a hearing and to intervene in an NRC proceeding, a petitioner must allege some injury in fact, i.e., a cognizable interest, arguably within the zone of interests protected by a relevant statute, which might be adversely affected if the proceeding has one outcome rather than another. Id.; Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 N.R.C. 610, 613 (1976); Nuclear Engineering Company (Sheffield Low-level Radioactive Waste Disposal Site), ALAB-473, 7 N.R.C. 737, 743 (1978).

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<sup>1/</sup> "Standing" is legal shorthand for the right to take part in a given case. Houston Lighting and Power Company, et al. (South Texas Project, Units 1 and 2), ALAB-549, 9 N.R.C. 644, 646 (1979).

Standing of Group Petitioners

Three groups have joined in the subject intervention petition. The Coalition for the Environment, St. Louis Region ("the Coalition"), which, the Joint Petition asserts, represents its members in any action or project which represents harm or potential harm to the environment, has its principal office in University City, Missouri. The Joint Petition asserts that among the Coalition's individual members are persons residing less than 50 miles from the Callaway Plant site. Joint Petition at 1, 2.

Missourians for Safe Energy ("MSE") is an organization whose purpose is to oppose the development of nuclear energy in Missouri and to promote conservation of energy and alternative sources of energy. The Joint Petition asserts that many of MSE's members reside in "the vicinity of the Callaway Plant site." Joint Petition at 2.

The Crawdad Alliance ("Crawdad") is a group of citizens who object to the proliferation of nuclear power. The Joint Petition asserts that members of Crawdad live downstream and downwind of the Callaway Plant, and that many of its members live in "close proximity to the Callaway Plant." Joint Petition at 3.

The deficiency Applicant finds in these assertions of organizational standing on behalf of members was squarely addressed in Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), NAB-328, 3 N.R.C. 420 (1976), where the petitioner organization had identified a member who

resided relatively close to the facility involved, but there had been no particularization of how the interests of that member might be adversely affected by the outcome of the proceeding. Rather, the petition had been founded largely upon the organization's asserted concern with the issue on which it sought to intervene. On the authority of Sierra Club v. Morton, 405 U.S. 727 (1972), the Atomic Safety and Licensing Appeal Board held that such concern was not enough to confer standing because, although an organization whose members are injured may represent those members in a proceeding, a mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization "adversely affected" or "aggrieved" within the meaning of the Administrative Procedure Act. 405 U.S. at 739-740. See also, Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 N.R.C. 402, 404 (1979).

Organizations are not clothed with independent standing to intervene in NRC licensing proceedings. Rather, any standing which an organization may possess is wholly derivative in character. It must appear 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. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 N.R.C. 377, 390 (1979). As the Appeal Board observed in that case, the alleged fact that there are organization members who

live in the general vicinity of the plant site does not alter matters. There is no presumption that every individual so situated will deem himself or herself potentially aggrieved by the outcome of the proceeding -- an essential ingredient of standing. Id. at 393.

Further, as in the case of the Joint Petition, where there is no disclosure of the name and address of one such member for each organization, residing in close proximity to the facility site, it is not possible even to verify the assertion that such members exist. Id. Thus, the deficiencies of the Joint Petition go beyond those found in Barnwell, ALAB-328, supra, where an individual member residing close to the facility was identified, but there had been no particularization of that member's interest. Here, not a single such resident is even identified.

The Joint Petition is signed, for the Coalition, by its Board President in University City, Missouri. It is signed for MSE by a member in University City -- which is approximately 75 miles from the Callaway Plant site. Joint Petition at 3. The Joint Petition is signed for Crawdad by a member in St. Louis, which is roughly 80 miles from the site. See Union Electric Company (Callaway Plant, Units 1 and 2), LBP-75-47, 2 N.R.C. 319, 320 (1975). There is no particularization of any interest in the proceeding of these three individuals, who cannot be said to live within close proximity to the

Callaway Plant site.<sup>2/</sup> Further, it is clear that status as a ratepayer of Union Electric Company (see Joint Petition at 2) is not a cognizable interest in NRC proceedings. The Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 N.R.C. 473, 476 (1978).

For the foregoing reasons, the Coalition, MSE and Crowdad have not shown, in the Joint Petition, that they have organizational standing to intervene in this proceeding because they have not demonstrated that they each have at least one member who has a cognizable interest which might be adversely affected by the outcome of the proceeding.

Standing of the Individual Petitioner

Kay Drey, of University City, Missouri, resides approximately 75 miles from the Callaway Plant site. Joint Petition at 3. Residence at such a distance from the plant site, however, is not sufficient to establish a presumptive interest in the proceeding in the absence of other grounds for standing. See Dairyland Power Company (La Cross Boiling Water Reactor), ALAB-497, 8 N.R.C. 312, 313 (1978).

While the Joint Petition (at 3-4) describes Ms. Drey's concern with and involvement in environmental matters, there is no assertion, particularized or otherwise, that she has a cognizable

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<sup>2/</sup> Applicant recognizes that it would have been enough for standing purposes if the Joint Petition had been signed by a ranking official of each organization who had the requisite personal interest, as an individual, to support an intervention petition. Duke Power Company (Amendment to Materials License, Etc.), ALAB-528, 9 N.R.C. 146, 151 (1979). Here, however, two of the signers are not ranking officials and none of the three have asserted a particularized personal interest.

interest which could be affected by the results of the proceeding. One must allege some injury that has occurred or probably will result from the action involved. Under this "injury in fact test" a mere academic interest in a matter, without any real impact on the person asserting it, will not confer standing. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 N.R.C. 438, 439 (1980), quoting Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 N.R.C. 610, 613 (1976).

### Conclusion

In an operating licensing proceeding, careful scrutiny of an intervention petition and request for hearing is fully warranted. As the Appeal Board observed with respect to the contention requirement, which has not yet even been addressed in this proceeding:<sup>3/</sup>

In an operating license proceeding, unlike a construction permit proceeding, a hearing is not mandatory and, if held, is restricted to those matters which have been put into controversy by the parties and are determined by the Licensing Board to be issues in the proceeding. [Citations omitted.] There is, accordingly, especially strong reason in an operating license proceeding why, before granting an intervention petition and thus triggering a hearing, a licensing board should take the utmost care to satisfy itself fully that there is at least

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<sup>3/</sup> While the Commission's Rules of Practice require that a petition for leave to intervene set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene, 10 C.F.R. § 2.714(a)(2), contentions need not be presented until fifteen days prior to the first (or the special) prehearing conference. 10 C.F.R. § 2.714(b). In an operating license proceeding, before a hearing may be directed or intervention granted, a licensing board must make specific

(footnote continued)

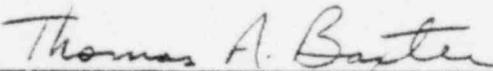
one contention advanced in the petition which, on its face, raises an issue clearly open to adjudication in the proceeding.

Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-183, 7 A.E.C. 222, 226 n.10 (1974). Repeating this passage in a later opinion, the Appeal Board stated: "We need only add that a board should take equal care in these cases to assure itself that potential intervenors do have a real stake in the proceeding." Cincinnati Gas and Electric Company, et al. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 N.R.C. 8, 12 (1976).

The Joint Petition to Intervene does not establish the standing, or personal interests, of the petitioners and should not be granted.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE



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Dated: October 10, 1980

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(Footnote cont'd.)

determinations on the presence of at least one adequate contention, as well as on the requisite personal interest of a petitioner. Cincinnati Gas and Electric Company, et al. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 N.R.C. 8, 10 (1976).

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Answer to the Joint Petition to Intervene of Coalition for the Environment, St. Louis Region, Missourians for Safe Energy, Crawdad Alliance and Kay Drey" were served this 10th day of October, 1980, by deposit in the U.S. mail, first class, postage prepaid, upon the following:

James P. Gleason, Esquire  
Chairman  
Atomic Safety and Licensing Board  
513 Gilmoure Drive  
Silver Spring, Maryland 20901

Mr. Glenn O. Bright  
Atomic Safety and Licensing Board Panel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

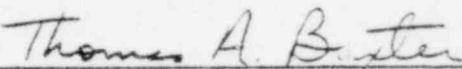
Dr. Jerry R. Kline  
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