

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL BOARD

Administrative Judges:

Alan S. Rosenthal, Chairman
Dr. John H. Buck
Christine N. Kohl



SERVER

FEB 4 1981

In the Matter of)
)
)

HOUSTON LIGHTING & POWER COMPANY)
)
)

(Allens Creek Nuclear Generating)
Station, Unit No. 1))
)

Docket No. 50-466

Dr. David Marrack, Bellaire, Texas, intervenor,
pro se.

MEMORANDUM AND ORDER

February 4, 1981

(ALAB-631)

David Marrack is one of a number of intervenors who are participants in this construction permit proceeding now in evidentiary hearing before the Licensing Board. Another participating intervenor is Wayne E. Rentfro.

During the course of the hearing session on January 23, 1981, Mr. Rentfro indicated a desire to pose two questions to an applicant's witness who was then testifying (Tr. 3841). Counsel for the applicant immediately interposed an objection on the ground that no part of the witness' testimony related to an issue within the scope of Mr. Rentfro's asserted interest in

the proceeding (ibid). In this connection, counsel relied upon our holding some years ago in the Prairie Island proceeding^{1/} to the effect that:

In both operating license and construction permit proceedings, an intervenor can and should be afforded the opportunity to cross-examine on those portions of a witness' testimony which relate to matters which have been placed into controversy by at least one of the parties to the proceeding — so long as that intervenor has a discernible interest in the resolution of the particular matter. [Emphasis supplied.]

In an accompanying footnote, we added:

For this purpose, the extent of the intervenor's interest in the proceeding is to be ascertained on the basis of those relevant assertions in the intervention petition which were explicitly or implicitly accepted by the Licensing Board in connection with the grant of intervention.^{2/}

After entertaining responses to the objection, the Licensing Board sustained it on the ground assigned by applicant's counsel (Tr. 3845). Thereafter, by way of clarification at the request of NRC staff counsel, the Board Chairman observed that the ruling would have little application beyond Mr. Rentfro because "I don't know of any other intervenor whose discernible interest is so

^{1/} Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 868 (1974), reconsideration denied, ALAB-252, 8 AEC 1175 (1975), affirmed, CLI-75-1, 1 NRC 1 (1975).

^{2/} 8 AEC at 868, fn. 15.

miniscule and so limited and so restricted as is [his], which is very limited and restricted to adverse health impacts of high voltage transmissio.. lines" (Tr. 3846). The Chairman did note that Dr. Marrack might "perhaps" be affected but added that "I'm not getting into that" (ibid.). Rather, he stressed, the ruling made by the Board applied only to Mr. Rentfro at that point; if the question arose again, "we will just have to rule on a party by party basis" (Tr. 3847).

What is now before us is a motion seeking review of the ruling under our directed certification authority. 10 CFR 2.718(i); Public Service Co. of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-271, 1 NRC 478, 482-83 (1975).^{3/} The movant is not, however, Mr. Rentfro or anyone purporting to represent him in this proceeding. Instead, the motion was submitted by Dr. Marrack acting on his own behalf.

For at least two independent reasons, directed certification must be denied.

1. As just seen, the Licensing Board confined its ruling to Mr. Rentfro and whether that ruling will ever have application to Dr. Marrack is at best conjectural. Dr. Marrack has no standing to press before this Board the grievances of other parties to the

^{3/} Although its caption refers to the Licensing Board, the body of the motion makes clear that it is addressed to this Board alone.

proceeding who are not represented by him. Puget Sound and Light Co. (Skagit Nuclear Power Project, Units 1 and 2), ALAB-556, 10 NRC 30, 32-33 (1979); Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-345, 4 NRC 212, 213 (1976). Nor is he entitled to complain himself of a licensing board ruling unless and until that ruling has worked a concrete injury to his personal interests. Prairie Island, ALAB-252, supra, 8 AEC at 1177; Toledo Edison Co. (Davis-Besse Nuclear Power Station), ALAB-157, 6 AEC 858, 859 (1973).

2. The question whether the Licensing Board correctly applied the Prairie Island cross-examination rule to Mr. Rentfro is scarcely worthy of our interlocutory examination. As we had occasion to reiterate in this proceeding just yesterday, we will not normally invoke our discretionary directed certification authority for the purpose of monitoring the day-to-day conduct of licensing board evidentiary hearings. ALAB-630, 13 NRC ___, ___ (slip opinion, p. 3).

In this connection, we do not understand Dr. Marrack to take issue with the Licensing Board's conclusion that Mr. Rentfro had not manifested a discernible interest in the matters to which the witness' testimony was addressed.^{4/} To the contrary, his

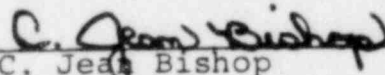
^{4/} We imply no opinion here on the correctness of that conclusion.

dissatisfaction appears to be with the "discernible interest" requirement itself and the fact that its first application in this proceeding was to Mr. Rentfro. We have been given no cause, however, to reconsider our imposition of that requirement in Prairie Island.^{5/} And there is no substance to the claim that the "ground rules" for the hearing were changed in "mid session". The evidentiary hearing had commenced on January 16 and, as the Licensing Board pointed out when the same claim was presented to it, the "discernible interest" issue simply had not earlier surfaced in connection with proposed intervenor cross-examination of witnesses for other parties (Tr. 3845).

Directed certification denied.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Bishop
Secretary to the
Appeal Board

^{5/} It might be noted that the entire Prairie Island rule, including the "discernible interest" requirement, received explicit Commission endorsement. CLI-75-1, supra, 1 NRC at 2.