

4/61
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
James P. Gleason, Chairman
Mr. Glenn O. Bright
Dr. Jerry R. Kline



SERVED
FEB 5 1981

In the Matter of:
UNION ELECTRIC COMPANY
(Callaway Plant, Unit 1)

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

MEMORANDUM AND ORDER
(Ruling on Requests for Hearing, Petitions for
Intervention and Order of Special Prehearing Conference)

In response to notices by the Nuclear Regulatory Commission of an opportunity for a hearing under 10 CFR 2.105 and published on August 26, 1980 and November 21, 1980 in the Federal Register, (45 Fed. Reg. 569F6) and (45 Fed. Reg. 77208), a number of requests and petitions were received. The rules and regulations of the NRC provide for participation in its operating license proceedings in several ways. For those desiring to participate as a party in a hearing procedure, with the right to present evidence therein, cross-examine witnesses and to avail themselves of prehearing procedures and appeal opportunities, the rules require that certain conditions be met.

Under 10 CFR 2.714(a)(2), a petition for leave to intervene as a party.....

shall set forth with particularity the interest of the petitioner in the proceeding, now that interest may be affected by the results of the proceeding, including the reasons why petitioners should be permitted to intervene with particular reference to the

8102090

205
G

factors in paragraph (d) of this section, and the specific aspect or aspects of the subject matter of the proceeding to which petitioner wishes to intervene.

Paragraph (d) of 2.714 states:

The Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on petitions to intervene and/or requests for hearing shall, in ruling on a petition for leave to intervene, consider the following factors, among other things:

- (1) The nature of the petitioners right under the 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.
- (3) The possible effect of any order which may be entered in the proceeding on the petitioners interest.

10 CFR Provides:

The presiding officer will afford representatives of an interested State, county, municipality, and/or agencies thereof, a reasonable opportunity to participate and introduce evidence, interrogate witnesses, and advise the Commission without requiring the representative to take a position with respect to the issue. Such participants may also file proposed findings and exceptions pursuant to 2.754 and 2.762 and petitions for review by the Commission pursuant to 2.786. The presiding officer may require such representative to indicate with reasonable specificity, in advance of the hearing, the subject matters on which he desire to participate.

And finally, a person who is not a party may, under 10 CFR 2.715(a), in the discretion of the presiding officer, be permitted to make a limited appearance by making oral or written statement of his or her position on the issues at any session of the hearing or any prehearing conference within such limits and on such conditions as may be fixed by the presiding officer, but may not otherwise participate in the proceeding.

Requests and Petitions

1. John C. Reed filed a request for hearing and an amended petition, with contentions, to intervene. Mr. Reed averred that his residence and the schools attended by his children are within a twenty mile distance to the Callaway plant site, that he could be affected by a nuclear accident at the plant and expressed an interest and concern over the adequacy of the applicants emergency response plans. Neither the Applicant nor the Staff (NRC) objected to his intervention. The Staff responded to Mr. Reed's contentions while the Applicant is reserving his response until the petitioner's amendment rights have expired.^{1/}

It is clear that the petitioner has satisfied both the "interest" and "aspect" requirements of 2.714(a)(2) and has the proper standing to participate as a party in the proceedings. Although he filed his petition in this own right, we also take note of his position as Director of the Callaway County Government's Emergency Management Agency. Assuming his representation was to be authorized, the Board would be inclined to grant his participation under 2.715(c) if he would make such request at the Special Prehearing Conference ordered herein. Inasmuch as he has submitted his contentions in his amended petition, there is no need to

^{1/} 10 CFR 2.714(a)(3) Any person who has filed a petition for leave to intervene or who has been admitted as a party pursuant to this section may amend his petition for leave to intervene. A petition may be amended without prior approval of the presiding officer at any time up to fifteen (15) days prior to the holding of special prehearing conference....

comply with the requirements of 2.714(b).^{2/} The petitioners request for free copying and service must be denied since the NRC is without authority to grant it.^{3/}

2. Marjorie Reilly, Energy Chairman of the League of Women Voters of University City, Missouri and the League of Women Voters of Missouri through its President filed substantially identical requests for a hearing and permission to make a limited appearance at the hearing. Both requests raised issues concerning the Applicants financial capability to operate two nuclear units if a potential reduction in customer power usage occurs and the cost in terms of environmental damage in comparison to other energy sources and conservation. Both requests questioned the appropriateness of the NRC issuing an operating license to Unit 2 prior to the plant being substantially completed. This issue is moot since the Applicant has amended its application and seeks a license for Unit 1 alone at this time.^{4/} Neither the Applicant nor the Staff objects to the requests here for a limited appearance.

^{2/} 10 CFR 2.714(b) Not later than fifteen (15) days prior to the holding of the special prehearing conference.....the petitioner shall file a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party.....

^{3/} Comptroller General's letter December 3, 1980 to U.S. House of Representatives Committee on Science and Technology concluded that free copy and service could not be made available by the NRC.

^{4/} In response to the Applicant's letter dated October 1, 1980, advising the NRC it was seeking an operating license for Unit 1 alone at this time, the Commission issued a Clarification and new notice of opportunity for hearing, 45 Fed. Reg. 77208.

3. The Public Service Commission of Missouri through the Office of it's General Counsel filed a request for a hearing and petitioned to intervene as an interested State Agency. Asserting a regulatory authority over public utilities, including the Applicant, the Commission's petition states a continuing jurisdiction over the construction of the Applicants facilities due to it's statutory authority to grant certificates of public convenience and necessity and it's authority to set rates. Neither the Applicant nor the Staff objects to the Commission's appearance and it will be granted under 2.715(c).

4. A Joint Petition requesting a hearing and leave to intervene was received from the following: Coalition for the Environment, St. Louis Region; Missourians for Safe Energy; Crawdad Alliance and Kay Drey. In an addendum to the petition, affidavits were submitted from members of the organizations authorizing representation of their interests by the organizations in the proceedings. The Joint Petition alleges its members receive their drinking water from the Missouri River which would or could be polluted by the plant, that its members who live in close proximity to the plant would or could be adversely affected by the operation of the facility and that personal and property damage was possible in the event of an nuclear incident. The petition also specifies a number of aspects on which intervention was sought including construction defects, inadequate radiation

exposure standards and unresolved safety issues such as a buildup of radioactive corrosion products. Neither the Applicant nor the Staff objected to the intervention request of the organization members in the Joint Petition but the Applicant opposes the request of Kay Drey which is supported by the Staff. The Applicant argues that her residence being 75 miles from the plant's site, her interest is too remote and she has failed to establish any cognizable interest in the proceeding.

There appears to be no question that the organization petitioners here have satisfied both the "interest" and "aspect" prerequisites to obtain standing to intervene in this proceeding. Any doubts in the Board's judgement, have been removed by the submittal of affidavits from some of their members who live in close proximity to the plant.^{5/} It is clear that an organization may intervene in a proceeding by cloaking it's members interest in NRC proceedings where the member has an affected interest and where as here, the representation of that interest has been authorized.^{6/}

It is a different set of facts, however, that are confronted in the petition of the remaining signatory to the joint effort. The residence of Kay Drey--75 miles from the site--is not within the proximity which has been recognized heretofore as within the geographical zone of interests that might be affected by accidental releases of fission products.^{7/}

^{5/} Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).

^{6/} Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390 (1979).

^{7/} Dairyland Power Corporation (La Crosse Boiling Water Reactor) ALAB-497, 8 NRC 312 (1978).

And with reference to other allegations in the Joint Petition that can be attributed to her--the possible drinking of polluted Missouri River water and the possible radioactive release from shipments of long and short term radioactive waste products--we view these as too general and remote to constitute a cognizable interest to be the basis for standing in this proceeding. Under past Commission decisions, which we follow here, there must be a demonstration that some "injury in fact" will probably result from the action contemplated by the proceeding.^{8/} The interests of the petitioner in the proceeding will be represented, of course, by her cosignatories, but she still has an opportunity under 2.714(a)(3) of the Rules--through the amendment process--to provide a further showing of a cognizable interest. The Board notes that the Staff's support of the petitioner's intervention is based in part on a telephone conversation where she communicated an apparent part time use of the Missouri River and area near the site for recreational purposes. At this point, we consider this information too indirect and too general for the Board's consideration.

5. Mrs. Joan Botwinick filed a request for a hearing and a petition to intervene on the grounds that, living downstream from the site, additional radioactive emissions into her family's drinking water could be injurious to their health and that of the St. Louis community. Her admission was opposed by the applicant and the Staff as not having established a cognizable interest. Mrs. Botwinick's residence is in Chesterfield, Mo. approximately

^{8/} Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976); Warth v. Seldin, 422 U.S. 490 (1975).

70 miles from the Callaway facility. The judgments expressed on Kay Drey's intervention request are applicable here. The petitioner's residence is not close enough to the Callaway site to justify an inference that she could be affected by the operation of the facility and therefore she has not demonstrated any interest that will justify her intervention. The Board desires to point out to her that she will have the same opportunity--up to fifteen (15) days prior to the Special Prehearing Conference--to amend her petition as Ms. Drey. In addition, if Mrs. Botwinick desires to do so, we will be pleased to afford her time to make a statement in a limited appearance at either the hearing or any prehearing conference.

6. The Missouri-Kansas Section of the American Nuclear Society petitioned to intervene alleging the interests and competence of its members in promoting nuclear science and engineering as well as their specialized knowledge of nuclear technology. The petition, signed by its Vice Chairman, attested that its members with specific expertise would be available to testify on various aspects of nuclear technology, energy economics and alternative energy resources. Expressing a concern that members of the Section sought a fair hearing of the facilities risks and benefits, the petition included several resumes of its members including that of its Vice Chairman. The admission of the Section was opposed by the applicant and the Staff through a conclusion with which we agree that no cognizable interest has been shown by the petitioner. It would appear although it is not stated that the organization desires intervention in order to support the issuance of a license to the applicant. Whether in opposition or support, however, participation as an intervenor can be granted only through the showing of a potential injury in fact to petitioners interests. Here there is no such

showing nor is there any identification of a specific aspect of the subject matter on which it desired to intervene, another requirement for intervention. And finally, the petition does not purport to represent at least a single member who has an interest that might be affected by the outcome of the proceeding. Accordingly, intervention must be denied with the same advice given others here, that the defects found may be capable of being cured through the amendment process.

7. Five local government officials submitted identical requests to participate in the proceeding under the provisions of 10 CFR 2.715(c) on matters pertaining to public health, safety and environmental issues. The officials, all from Missouri, are Howard Steffen, Mayor of Chamois; Harold Lottman, Presiding Judge of Owensville; Earl Brown, School Superintendent, Kingdom City; Fred Lukey, Presiding Judge, Rhineland and Samuel J. Birk, Mayor of the City of Morrison. Although the Applicant and Staff raised questions concerning the representative authority of some of the petitioners, their participation was not opposed if their representation was validated in subsequent actions. We believe all the government representatives qualify for participation under 2.715(c). It is expected by the Board that their representative authority will be authenticated at the Special Prehearing Conference and at such time, they will be required to indicate with more specificity, the subject matters on which they desire to participate in the proceeding.

8. Associate Judge Robert G. Wright of Callaway County filed a request on January 16, 1981, to participate as a government representative. Recognizing his request was past the December 22, 1980 regulatory deadline, he seeks to have a waiver on the ground that he did not assume his office until January 1, 1981. Neither the Applicant nor the Staff oppose his admission provided he can substantiate his representative authority. In view of the closeness of the filing deadline to his taking office and the absence of any other official in the proceeding from Callaway County where the plant is located, the Board will approve his petition to participate under 2.715(c). This approval is conditioned on a subsequent showing that he is authorized to represent the government of the County.

ORDER

For all the foregoing reasons and based upon a consideration of the entire record in this matter, it is this 4th day of February 1981.

ORDERED

That the requests for a hearing and the petitions to intervene of the following are granted under provisions of 10 CFR 2.714:

John G. Reed
Coalition for the Environment, St. Louis Region

Missourians for Safe Energy
Crawdad Alliance

That the requests to intervene are granted to the following under provisions of 10 CFR 2.715(c):

Howard Steffen
Harold Lottman
Earl Brown
Fred Lukey
Samuel J. Birk
Robert G. Wright
Public Service Commission of Missouri

That the representatives of the League of Women Voters of University City, Mo. and the State of Missouri will be granted the opportunity of making a limited appearance under 10 CFR 2.715(a) at this or a subsequent preliminary conference or at the hearing on this application.

The following petitions are denied:

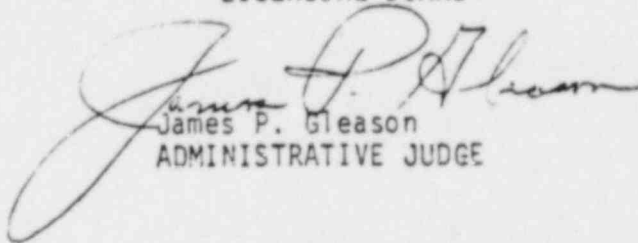
Kay Drey
Joan Botwinick
Missouri-Kansas Section, American Nuclear Society

That a date and place for the hearing will be announced at a later time.

And that a Special Prehearing Conference for the purpose of identification of the issues and to take such further action on petitions to intervene, as may be necessary and to establish a schedule for further actions in the proceeding will be held at 9 a.m., on March 24-25, 1981, at the Ramada Inn, 1510 Jefferson Highway, in Jefferson City, Mo.

And that all parties, Applicant, Staff and Intervenor are directed to be present, or represented through their counsel.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD



James P. Gleason
ADMINISTRATIVE JUDGE