

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
CLEVELAND ELECTRIC ILLUMINATING CO.,)	Docket Nos. 50-440
<u>ET AL.</u>)	50-441
(Perry Nuclear Power Plant,)	
Units 1 and 2))	

NRC STAFF ANSWER TO THE PETITION
TO INTERVENE DATED MARCH 15 1981

On February 13, 1981, the Nuclear Regulatory Commission (Commission) published in the Federal Register (46 Fed. Reg. 12372) a notice of opportunity for a hearing on the application for an operating license for the Perry Nuclear Power Plant, Units 1 and 2. On March 15, 1981 a timely petition for leave to intervene was 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 Steidam, Harold Steindam, Wes Gerlosky, Margaret Gerlosky, William Brotzman, Grand River Winery, Cumings Homsted Park Corp., and Toledo Coalition for Safe Energy.

To establish standing, the provisions of 10 C.F.R. § 2.714(a)(2) require that a petitioner to an NRC proceeding shall:

1. Set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene; and

2. Identify the specific aspect or aspects of the subject matter of the proceeding, as to which petitioner wishes to intervene.

The petition is by four associations, two corporations and twelve individuals.

The Associations: Sunflower Alliance, Inc., Northshore Alert, Citizens for Safe Energy and Toledo Coalition for Safe Energy all are composed of unidentified persons who live within 50 miles of the facility. The only interest that they put forward as being subject to possible injury by the operation of Perry is an economic interest of their members - the petition being couched in terms such as "value of their property", "economic development," "economic impact," and capitol for investment being improperly used.

The Corporations: Grand River Winery and Cumings Homsted Park Corp. are located within 10 miles of the facility and assert only that they "are vitally interested in the safe, economic and professional operation of ... and Perry ... and [that] their lives and property will be affected [by] ... this proceeding."

The Individuals: Evelyn Stebbins and Richard Sering assert no interest at all. David Nash, Gail Nash, Linda Qualls, David Qualls, Jenny Steindam, Wes Gerlosky, Margaret Gerlosky and William Brotzman assert that they live within 10 miles of the facility and that they "are vitally interested in the safe, economic and professional operation of ... Perry ... and [that] their lives and property will be affected ... [by] this proceeding."

In determining whether the requirements of 10 C.F.R. § 2.714 have been met by a particular petitioner, thus allowing him to intervene as of

right in a proceeding, the Commission has ruled that judicial concepts of standing should be applied in NRC licensing proceedings. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976). These concepts require a showing that the action being challenged could cause injury in fact to the person seeking standing, and that such injury is arguably within the "zone of interest," protected by the statute governing the proceeding. Id.

There is no showing, or attempt to show, that the Associations themselves have a safety or environmental interest that could be affected by the operation of the Perry facility. Absent such a showing, the Associations lack standing and the petition dated March 15, 1981 should be denied as to them.

However clear the foregoing may be it does not completely resolve the issue of whether the petition should be granted or denied as to the four named associations.

In Warth v. Seldin 422 U.S. 490 (1976) at 511, the Supreme Court stated that "[e]ven in the absence of injury to itself, an association may have standing solely as the representative of its members." And, in Sierra Club v. Morton 405 U.S. 727 at 739, the Supreme Court stated "[i]t is clear that an organization whose members are injured may represent those members in a proceeding for judicial review." In conformity with this authority, the Appeal Board has held that an organization, even though it suffers no injury to itself by the proposed action, may intervene in a proceeding as the representative of its members. Houston Lighting and Power Co. (South Texas Project, Units 1 & 2), ALAB-549, 9 NRC 645 (1979); Public Service Co. of Indiana (Marble Hill

Nuclear Generating Station, Units 1 & 2), ALAB-322, 3 NRC 329 (1976). See, Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, (April 4, 1979). However, when intervening in this representative capacity, an organization must establish 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. A member with such an interest in the proceeding in which the organization seeks leave to intervene, thus clothes the organization with that member's personal standing. Thus it is incumbent to examine the March 15, 1981 petition to determine if there are facts alleged which would support standing for individual members of the Associations and if so whether those members have authorized the Associations to represent their interests. Here, the petition is fatally defected. No individual members of the Associations are identified and no injury to any member or to the Association itself is asserted. Based upon these facts, the petition should be denied as to the Associations.

As to the Associations themselves and their members any economic interests are asserted to be subject to possible harm by the operation of Perry. Economic interests are not sufficient to allow standing to intervene as a matter of right since economic interests are not within the scope of interests sought to be protected by the Atomic Energy Act. Kansas Gas & Electric Co. et al. (Wolf Creek Generating Station, Unit 1, ALAB-424, 6 NRC 122, 128 (1977)); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1420-21 (1977); Detroit Edison Co. (Greenwood Energy Center, Units 2 & 3), ALAB-376, 5 NRC 426 (1977); Public Service Co. of Oklahoma et al. (Black Fox Nuclear

Power Station, Units 1 & 2), LBP-77-17, 5 NRC 657 (1977).^{1/} Nor are such interests within the zone of interests protected by the National Environmental Policy Act. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 & 2), ALAB-333, 3 NRC 804 (1976). Economic interest or injury gives standing under the National Environmental Policy Act only if it is environmentally related. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 (1977) which is not the case here. See also Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 & 2), ALAB-292, 2 NRC 631, 640 (1975).

Thus the March 15, 1981 petition does not demonstrate an interest of any Association or any member thereof which is within the zone of interests to be protected by the Atomic Energy Act or the National Environmental Policy Act. Failing to set forth such an interest, the petition must be denied as to these Associations.

The Corporations: All that is asserted in regard to Grand River Winery and Cumings Homsted Park Corp. is that they are located within 10 miles of the facility (which is favorable for intervention, see North Anna cited supra) and that they are interested in the safe,

^{1/} See also Houston Lighting and Power Co (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239 at 262 where the Appeal Board noted "It is now settled that an interest which is purely economic in character does not confer standing" to intervene under the Atomic Energy Act.

economic and professional operation of Perry. Safe and professional operation are such generalizations as to be meaningless. The economic interests of the Corporations are not within the zones of interests protected under the Atomic Energy Act or the National Environmental Policy Act, see discussion supra and therefore the petition should be denied as to these two Corporations.

The Individuals: Evelyn Stebbins and Richard Sering live in Cugauaga County, Ohio and no interest at all is attributed to them. Therefore, the petition should be denied as to them. The other individuals are alleged to live within a 10 mile radius of the facility, sufficient for standing under North Anna cited supra. No other interest is attributed to them. As to these ten individuals, there is no particularization in the petition of how the interests of any one of these ten persons might be affected by the issuance of operating licenses for the Perry facility. This fatally defective, see Allens Creek cited supra, 9 NRC 377 at 390 and 393. Therefore the petition should be denied as to these ten individuals.

Although the petitioner and its members lack standing to intervene as of right under judicial standing concepts and NRC precedent, they may nevertheless be admitted to the proceeding in the Licensing Board's discretion. In determining whether discretionary intervention should be permitted, the Commission has indicated that the Licensing Board should

be guided by the following factors, among others:

- a) Weighing in favor of allowing intervention --
 - 1) The extent to which the petitioner's participation may be expected to assist in developing a sound record.
 - 2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
 - 3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.
- b) Weighing against allowing intervention --
 - 4) The availability of other means whereby petitioner's interest will be protected.
 - 5) The extent to which the petitioner's interest will be represented by existing parties.
 - 6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

Portland General Electric Co. et al. (Pebble Springs Nuclear Plant, Units 1 & 2), CLI-76-27, 4 NRC 610, 616 (1976).

The primary factor to be considered is the significance of the contribution that a petitioner might make. Pebble Springs supra. Thus,

foremost among the factors listed above is whether the intervention would likely produce a valuable contribution to the NRC's decisionmaking process on a significant safety or environmental issue appropriately addressed in the proceeding in question. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-1418 (1977). In the instant matter there is no showing at all that any of the associations, corporations or individuals could make any contributions to NRC's decisionmaking process either in safety or environmental matters.

In this instant matter items (a)(1),(2) and (3) and (b)(6) all militate against the petitioners for none of the petitioners have demonstrated any discernible interest which could be cognizable under the Atomic Energy Act or the National Environmental Policy Act or particularized how that interest could be adversely affected by the operation of Perry. Therefore we need consider only items (b)(4) and (5). It is clear that only the petitioners themselves are in a position to represent their particular parochial interests - none of which have thus far been defined. This is not sufficient to cause the Licensing Board to admit the petitioners at the present time.

Summary of Staff Conclusions

1) Sunflower Alliance, Inc., Northshore Alert, Citizens for Safe Energy and Toledo Coalition For Safe Energy have not demonstrated interest, standing or particularization of possible injury to themselves except for a vague generalization of economic injury and the petition should be denied as to them.

2) No members of the four association petitioners named immediately above have been disclosed - much less their interests - possible harms identified.

3) Cumings Homsted Park Corp., and Grand River Winery have asserted only economic interests which are not sufficient to permit them to intervene.

4) Evelyn Stebbins and Richard Sering assert no interest at all.

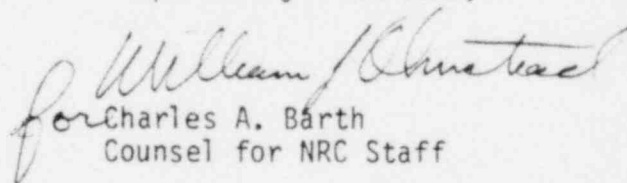
5) David Nash, Gail Caduff Nass, Linda Qualls, David Qualls, Jenny Steindam, Harold Steindam, Wes Gerlosky, Maragaret Gerlosky and William Brotzman all allege only a vague interest in economic and safe wellbeing - without particularizing the aspect of the operation of Perry which could injure them. This is not sufficient to authorize intervention.

Contentions: Paragraphs 8, 10, 12, 13, 15, 17, 19, 21, 23, 25 and 27 all purport to be contentions. They need not be addressed now.

Staff Recommendation

The Staff recommends that the petition of March 15, 1981 be denied.

Respectfully submitted,


for Charles A. Barth
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 27th day of March 1981