

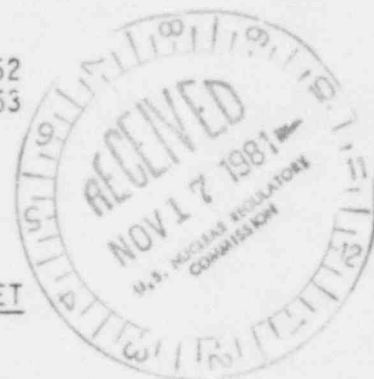
November 16, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of  
PHILADELPHIA ELECTRIC COMPANY  
(Limerick Generating Station,  
Units 1 and 2)

}  
Docket Nos. 50-352  
50-353  
}



NRC STAFF RESPONSE TO SUPPLEMENTAL  
PETITION TO INTERVENE OF WILLIAM A. LOCHSTET

I. INTRODUCTION

On September 18, 1981, Dr. William A. Lochstet filed a timely petition to intervene in this proceeding. Dr. Lochstet alleged that his health and safety would be adversely affected by the operation of the Limerick facility, that he resides 120 miles from the site and has had occasion to travel within 3 miles of it, that breathing the air and consuming locally grown food during such trips posed a potential health threat, and that radon gas emitted from mining operations in the western United States would contaminate the air in his home of State College, Pennsylvania.

Responding to the Lochstet petition to intervene, the Staff opposed his admission to the proceeding as of right for failure to show standing and failure to specify any aspect of the subject matter of the proceeding as to which he wished to intervene as required by 10 C.F.R.

§ 2.714(a)(2). The Staff held that the petition as originally drawn did

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not establish a cognizable interest in the licensing proceeding in light of the requirements of 10 C.F.R. § 2.714.<sup>1/</sup>

The Staff also held that there was no basis upon which to admit Dr. Lochstet as a party on a discretionary basis. The Staff rejected the petitioner's contention that his doctorate degree and contribution in the Three Mile Island proceeding reflected a special competence that justified his admission to this proceeding. The Staff found that he had not specifically set forth any aspect of the proceeding on which he wished to intervene which had not or could not be raised by other petitioners. Further, the Staff found that the petitioner had not shown that other petitioners could not represent his interests or pursue the broad issues he identified with equal effectiveness.<sup>2/</sup>

After review of his petition, the Atomic Safety and Licensing Board stated its preliminary view that Dr. Lochstet did not show grounds for intervention as of right nor meet the threshold requirements for discretionary intervention.<sup>3/</sup> Moreover, the Board noted that Dr. Lochstet participated in an earlier proceeding in his capacity as Secretary of the Environmental Coalition on Nuclear Power (ECNP). Noting

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<sup>1/</sup> "NRC Staff Response to Petitions to Intervene and Request for Hearing ..." (October 8, 1981) at 21-23.

<sup>2/</sup> Id. at 23.

<sup>3/</sup> "Memorandum and Order Setting Schedule for Submission of Contentions and Other Preliminary Information" (hereinafter, "Order") (October 14, 1981) at 11-12.

further that ECNP may be admitted to the instant proceeding, the Board directed Dr. Lochstet to "state whether he was still an officer or member of ECNP" and to show "how he would be prejudiced by being required to participate ... under ECNP's banner."<sup>4/</sup>

In accordance with the provisions of 10 C.F.R. § 2.714(a)(3)<sup>5/</sup> and in response to the Board Order, Dr. Lochstet filed a "Supplemental Petition to Intervene," which addressed his relationship to ECNP, the recreational and other personal reasons which brought him in the vicinity of the site in the past, and two aspects of the proceeding he wished to address upon intervention.<sup>6/</sup>

For reasons set forth below, the Staff believes that Dr. Lochstet has not established his standing to intervene in this proceeding as of right nor has he met the requirements for discretionary intervention.

## II. DISCUSSION

The deficiencies perceived by the Staff and Board in Dr. Lochstet's original petition to intervene are not remedied in his Supplemental

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<sup>4/</sup> Order at 11.

<sup>5/</sup> Amendment of a petition is permitted without prior approval of the presiding officer at any time up to 15 days prior to the holding of the special prehearing conference.

<sup>6/</sup> "Response to Board for Specific Information, Staff and Applicant Supplement to Petition to Intervene" (October 22, 1981) (hereinafter, "Supplemental Petition").

Petition. The criteria for establishing standing as of right were discussed earlier by the Staff,<sup>7/</sup> and will not be restated herein. Although a petitioner may base his standing upon a showing that his residence is "within the geographical zone that might be affected by an accidental release of fission products," the cases generally hold that intervention as of right will only be presumed for residence within 50 miles of the reactor site.<sup>8/</sup> A residence more than 100 miles from the site is too remote, absent some identification of other basis for standing, to confer standing.<sup>9/</sup>

We disagree with Dr. Lochstet's claim that his occasional short trips for recreational or similar purposes to the vicinity of the facility are an adequate basis for standing. In several cases,

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<sup>7/</sup> NRC Staff Response at 3-5.

<sup>8/</sup> Louisiana Power and Light Company (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372, n. 6 (1973); Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631 (1973). Gulf States Utilities Company (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 223-24 (1974).

<sup>9/</sup> Houston Lighting and Power Company, et al. (South Texas Project, Units 1 and 2), LBP-79-10, 9 NRC 439, 452 (1979).

recreational activities in the general vicinity of a facility linked with local residency have been sufficient to confer standing.<sup>10/</sup> However, mere occasional trips to places within the general vicinity of the site by persons resident outside of the geographical impact area have been held to be insufficient.<sup>11/</sup>

Taking into account the actual time<sup>12/</sup> spent in the area and the distance of his residence and those places visited, from the facility,<sup>13/</sup> Dr. Lochstet appears to have de minimis contacts with the area in close proximity to the facility and these contacts are insufficient to confer standing in this proceeding as a matter of right.

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<sup>10/</sup> Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), CL1-73-10, 6 AEC 173 (1973). Persons living near the plant who use the water body (Conowingo Pond) as a recreational facility were concerned about water quality effects of thermal effluent. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190 (1973). Residents within 30 to 40 miles of the reactor site "use the area in close proximity to the facility for recreational and other purposes." Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 57 (1979). Person residing 45 miles distant "engages in canoeing on the North Anna River."

<sup>11/</sup> Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1150 (1977). Occasional trips to a community 23 miles from the site and other communities asserted to be "near" the site when the petitioner's residence was 125 miles distance was held to be insufficient to confer standing.

<sup>12/</sup> Tennessee Valley Authority (Watts Bar Nuclear Generating Station, Unit 1), ALAB-413, 5 NRC 1418, 1422 n. 4 (1977); Northern States Power Co. (Prairie Island Nuclear Power Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 189-90 (1973).

<sup>13/</sup> Single days as close as 33 miles, and 4 days, at 83 miles from the site.

A deficiency perceived by the Staff in Dr. Lochstet's initial petition was his failure to specify any aspect of the subject matter of the proceeding as to which he wished to intervene. The petitioner has now alleged two aspects which he plans to address: (1) potential for Emergency Core Cooling System (ECCS) failure and (2) presence of radon in the air in State College, Pennsylvania, from mill tailings in the western United States.

First, he alleges in his Supplemental Petition that pump failures in the ECCS in the event of a loss-of-coolant accident will endanger the people of Philadelphia. However, Dr. Lochstet is not a Philadelphia resident and, based on the distance from his residence to the site, it is not apparent that he would be affected by an accident at Limerick involving ECCS failure. In proceedings before the NRC the general rule that litigants may only assert their own rights has been applied.<sup>14/</sup> Accordingly, Dr. Lochstet cannot represent the interests of the residents of Philadelphia as he proposes.

Second, Dr. Lochstet alleges in his Supplemental Petition that breathing the air in State College, Pennsylvania, the city of his residence, is hazardous to his health due to radon emissions from mill tailings in the western United States which waft across the continent.

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<sup>14/</sup> Although in some instances the courts have found that the constitutional or statutory provision in question implies an entitlement to advance a "claim to relief [which] rests on the legal rights of third parties," we perceive nothing in the Atomic Energy Act or NEPA which would undergird a conclusion that either or both of those statutes contain such an implication. Watts Bar, ALAB-413, supra n. 11, 5 NRC at 1421.

We believe this is too remote an interest in the result of this proceeding to justify a grant of intervention.<sup>15/</sup>

Since it appears that Dr. Lochstet cannot be permitted to intervene as a matter of right, we must now address his request to intervene on a discretionary basis. Discretionary intervention may be granted "where petitioners fail to establish standing as of right but show significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, set forth these matters with suitable specificity to allow evaluation, and demonstrate their importance and immediacy, justifying the time necessary to consider them."<sup>16/</sup>

In responding to the Board's request for more specific information, Dr. Lochstet has failed to significantly clarify his membership status with respect to ECNP. While he is not precluded from seeking independent intervenor status, Dr. Lochstet has failed to show that ECNP, assuming it is admitted to this proceeding, could not adequately represent his interests or that representation by ECNP might result in prejudice to his interest.

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<sup>15/</sup> The NRC would not be required to consider such a remote and speculative impact under NEPA. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163, 183 (1975); Long Island Lighting Co. (Shoreham Nuclear Power Station), ALAB-156, 6 AEC 831, 836, 838 (1973); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), ALAB-161, 6 AEC 1003, 1011 (1973); Environmental Defense Fund v. Corps of Engineers, 348 F.Supp. 916, 933 (N.D. Miss., 1972).

<sup>16/</sup> Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, 1 and 2), CLI-76-27, 4 NRC 614-617 (1976).

Finally, Dr. Lochstet does not establish any reason to believe that he is likely to make a substantial contribution to this proceeding which will not otherwise be made. References to his activity in the TMI proceedings and matters he would address in the present case lack the specificity required to evaluate their importance and justify Board consideration. Nor does Dr. Lochstet claim to have expert assistance available to him.<sup>17/</sup>

Moreover, it should be noted that even if Dr. Lochstet were found to have standing, it might still be appropriate to consolidate his intervention with that of another successful petitioner for intervention, in this case most likely ECNP.<sup>18/</sup>

### III. CONCLUSION

For the reasons discussed above regarding lack of standing, the failure to identify aspects of the proceeding which Dr. Lochstet may address, and the inadequate support for discretionary intervention, the Staff finds that the petitioner has not provided the information requested in the Board's Order nor has he complied with the requirements

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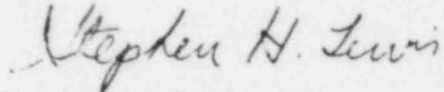
<sup>17/</sup> Compare Black Fox, ALAB-397, supra, n. 10, 5 NRC at 1149-1150, where the successful petitioner was willing and able to adduce the testimony of a qualified expert, and Watts Bar, ALAB-413, 5 NRC 1423, n. 7, in which petitioner indicated that it "would only be possible to bring in" expert witnesses "if different public interest groups decide...to fund...it."

<sup>18/</sup> See 10 C.F.R. § 2.715a.



of 10 C.F.R. § 2.714. Dr. Lochstet's individual petition to intervene in this proceeding should be denied.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stephen H. Lewis".

Stephen H. Lewis  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 16th day of November, 1981

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO SUPPLEMENTAL PETITION TO INTERVENE OF WILLIAM A. LOCHSTET" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 16th day of November, 1981:

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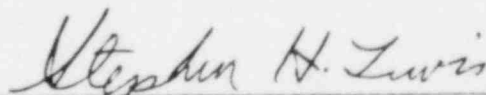
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