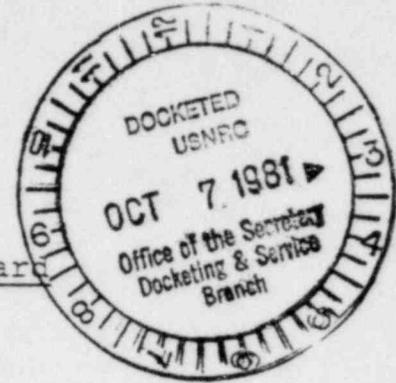


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

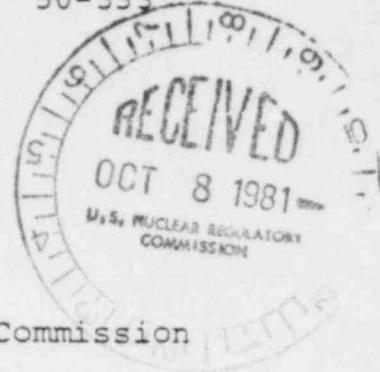


Before the Atomic Safety and Licensing Board

In the Matter of)
)
Philadelphia Electric Company) Docket Nos. 50-352
) 50-353
(Limerick Generating Station,)
Units 1 and 2))

APPLICANT'S ANSWER TO
ENVIRONMENTAL COALITION ON NUCLEAR POWER

Preliminary Statement



On August 21, 1981, the Nuclear Regulatory Commission ("Commission" or "NRC") published a notice in the Federal Register entitled "Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), Receipt of Application for Facility Operating Licenses; Consideration of Issuance of Facility Operating Licenses; Availability of Applicant's Environmental Report; and Opportunity for Hearing" ("Notice"). ^{1/}

In response to the Notice, a petition for intervention was filed by the Environmental Coalition on Nuclear Power ("ENCP"), dated September 21, 1981. The petition was signed by Dr. Judith H. Johnsrud, who states that she has been authorized by ECNP to represent its members in this proceeding. ^{2/} The petition is not supported by the statements of individual ECNP members asserting an interest in

1/ 46 Fed. Reg. 42557 (August 21, 1981).

2/ ENCP petition at 2.

DS03
1/1

the proceeding and authorizing ECNP to represent that interest.

For the reasons discussed more fully below, petitioner ECNP has failed to satisfy the requirements for organizational standing in an NRC proceeding. Nor has petitioner identified the "specific aspect or aspects of the subject matter of the proceeding" which it wishes to pursue. Accordingly, the petition should be denied.

Argument

Under the Commission's Rules of Practice, a petition to intervene in a licensing proceeding may be granted only if the requirements of 10 C.F.R. §§2.714(a)(2) and (d) have been satisfied. In essence, the regulations require the petitioner to state his specific interest in the proceeding and explain how that interest may be affected by the outcome of the proceeding.

It is now well settled that "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." Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390 (1979).^{3/} In other words, an organizational petitioner must

^{3/} See also Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728 (1979); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73 (1979).

establish that at least one of its members has legal standing to intervene in this proceeding under the rules applicable to individual petitioners.

In response to the petition of Marvin I. Lewis to intervene in this proceeding, Applicant has stated its position as to the necessary particularization of an individual petitioner's identifiable interest in a licensing proceeding, including an explanation of how that interest would be affected by any given outcome in the proceeding. This position is equally applicable to the generalized statements of petitioner's members herein. Rather than furnish the Licensing Board with repetitive pleadings, Applicant hereby incorporates and respectfully refers the Board to its answer to the Lewis petition for a statement of the additional authorities upon which 4/ relies in opposing the instant petition.

The ECNP petition states that a number of its members "reside, work and/or own property in the immediate vicinity of Limerick."^{5/} Although several ECNP members are named, individual statements by these persons identifying their own individual interests and further requesting and authorizing ECNP to represent those interests are not provided. As such, the petition merely states the general interest of petitioner's membership in "their personal health and safety and . . . the value and utility of their property."^{6/}

4/ Petitioner herein has been served a copy of Applicant's answer to the Lewis petition.

5/ ECNP petition at 1.

6/ ECNP petition at 2.

Of course, the fact that ECNP was an intervenor in the construction permit proceeding is not a basis for determining its standing at the operating license stage. Thus, the fact that a petitioner may have standing to intervene in one proceeding involving a particular plant does not automatically entitle that petitioner to intervene in all subsequent proceedings involving that plant. See Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), LBP-75-22, 1 NRC 451, 455 (1975).

The economic interests asserted by petitioner, such as a possible "decline of property value"^{7/} are insufficient to satisfy standing requirements under the decisions of the Commissioners and the judicial precedents those cases have adopted as the Commission's applicable law. Such generalized apprehensions of "community deterioration" are simply not within the "zone of interests" cognizable under the operating statutes of the NRC.^{8/} Also, the concerns expressed by petitioner, essentially for the economic welfare of the area, are indistinguishable from those shared in substantially equal measure by all or a large class of the public and therefore fail to "show a distinct and palpable harm" to petitioner,^{9/} and fail to show how petitioner personally

^{7/} ENCP petition at 2.

^{8/} The Commission has determined "to exclude psychological stress and community deterioration contentions" in reactor proceedings. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289 (Restart), CLI-81-20 (September 17, 1981).

^{9/} Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977).

"will or might be injured in fact by one or more of the possible outcomes of this proceeding."^{10/}

Likewise, petitioner's health concerns pertain to interests which are indistinguishable from those shared in substantially equal measure by all or a large class of the public.^{11/} Such a generalized interest fails to "show a distinct and palpable harm" to petitioner's members. It also fails to show how petitioner's members "will be or might be injured in fact one or more of the possible outcomes of the proceedings."^{12/} Accordingly, ECNP's interest in nuclear power is not a basis for intervening on behalf of its members because no particularized injury to its members has been shown. The Supreme Court "has held that an organization's mere interest in a problem 'no matter how long standing the interest and no matter how qualified the organization is in evaluating the problem,' is not sufficient for standing to obtain judicial review."^{13/}

^{10/} Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 740 (1978).

^{11/} Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977).

^{12/} Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 740 (1978). Thus, in addressing this particular requirement for intervention under 10 C.F.R. §2.714(d)(3) petitioner is unable to state with particularity any possible effect the licensing of the Limerick facility would have upon its membership aside from effects attributable to the general public at large.

^{13/} Westinghouse Electrical Corp. (Export to South Korea), CLI-80-30, 12 NRC 253, 258 (1980), citing Sierra Club v. Morton, 405 U.S. 727, 739 (1972).

The failure of ENCP to delineate the interests of its members is therefore fatal to the petition. In the Allens Creek decision in ALAB-535, the Appeal Board emphasized that the Licensing Board "was not merely entitled but obligated to satisfy himself that there was at least one member of the [petitioner organization] with a particularized interest which might be affected by the outcome of the proceeding" and, further, that the Board was not required "to presume that the [petitioner] had a member with the requisite affected interest on the strength of nothing more than the naked representation in its petition that a certain number of [petitioner's] members reside within 'close proximity' to the site of the proposed facility."^{14/} The Appeal Board explained its rationale as follows:

Although it may be reasonable to suppose that most (perhaps all) [petitioner's] members share that dedication as well as subscribe to the general objectives of the organization as spelled out in the petition, it scarcely follows perforce that each considers that construction of the Allens Creek facility would invade some personal interest "arguably within the zone of interests sought to be protected or regulated" by either the statutes this Commission enforces or the Constitution. Insofar as we are aware, joining and retaining membership in [petitioner] does not signify adherence to any particular views regarding the desirability of nuclear power facilities, either from

^{14/} Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 391-92 (1978).

a civil liberties standpoint or otherwise. Nor, more importantly, does there appear to be any necessary link between holding [petitioner] membership and possessing an interest which might be affected by the construction or operation of such a facility. Indeed, for all that appears on this record, the personal interests of any particular [petitioner] member might be advanced, rather than harmed, by the construction of Allens Creek - i.e., the proposed licensing action would cause the member no injury in fact at all.

.....
Absent disclosure of the name and address of one such member, it is not possible to verify the assertion that such members exist. In a footnote in their brief, the amici curiae endeavor to brush this consideration aside by noting that the veracity of [petitioner's] allegation that it has nearby members that has never been challenged and, were it to be, the Board below could require a [petitioner] officer to submit an affidavit attesting to the truthfulness of the allegation. What this line of reasoning ignores is that both the Board and the other parties were entitled to be provided with sufficient information to enable them to determine for themselves, by independent inquiry if thought warranted, whether a basis existed for a formal challenge to the truthfulness of the assertions ... [petitioner's] petition. Beyond that, we are unprepared to accept amici's implicit thesis that standing may be established by means of an affidavit which makes conclusory assertions not susceptible of verification by either other litigants or the adjudicatory tribunal. We know of no authority for such a novel and unattractive proposition, which to us runs counter to fundamental concepts of procedural due process. 15/

15/ Id. at 392-93 (footnote and citations omitted) (emphasis in original).

Because petitioner in Allens Creek did not satisfy this requirement, its petition to intervene was denied.

The same approach has been taken in a number of other licensing cases. For example, in the Enrico Fermi proceeding, the Board stated that an organization which seeks to intervene on the basis of the interest of its members "must identify specifically the name and address of at least one affected member who wishes to be represented by the organization."^{16/} In Waterford, the Board similarly stated that institutional standing requires the representative to demonstrate that at least one of its members has satisfied the "injury in fact" and "zone of interest" tests and has at least implicitly authorized the organization to represent his interests.^{17/} More recently, the Licensing Board in the Perry proceeding also stated the requirement that petitions for intervention "be accompanied by one or more affidavits stating the place of residence of members on whom standing is based and stating that the organization is authorized to represent the member's interests."^{18/}

16/ Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73 (1979).

17/ Louisiana Power and Light Company (Waterford Steam Electrical Station, Unit 3), Docket No. 50-382, "Memorandum and Order" (March 7, 1979) (slip opinion at 4).

18/ Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440 and 50-441, "Memorandum and Order Scheduling Prehearing Conference Regarding Petitions for Intervention" (April 9, 1981) (slip opinion at 6).

In the Big Rock Point proceeding, the Licensing Board held that intervention must be denied because the organization had failed to identify specific members by name and address, provide a statement by such members authorizing the organization to represent it, and provide a statement of the member's interests which would be affected by the proposed action.^{19/} And in Comanche Peak, the Licensing Board reiterated that while an organization can establish standing through its members whose interests may be affected, "the specific members must be identified, how their interest may be affected must be shown, and the member's authorization to the organization must be stated"^{20/} Accordingly, the unsupported and conclusionary representation by ENCP's representative that its membership possesses the requisite personal interest necessary for intervention, merely because they reside, work or own property in the area, is insufficient as a matter of law for intervention.

As a separate matter, ECNP has failed to comply with the requirement under the rules for intervention that it designate "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to

^{19/} Consumers Power Company (Big Rock Point Nuclear Plant), Docket No. 50-155, "Memorandum and Order" (September 25, 1979) (slip opinion at 4).

^{20/} Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728, 729 (1979).

intervene."^{21/} The aspects designated by ECNP merely outline the most general of areas, making unspecified reference to the Final Safety Analysis Report and Environmental Report. These items are entirely too vague to meet the standard of specificity under 10 C.F.R. §2.714(a)(2). Also, given the standing requirements discussed above, all aspects alleged by petitioner, including any contentions thereunder, must necessarily be limited to the demonstrated "injury in fact," if any.

Finally, ECNP's request for financial assistance must be denied. As the Licensing Board stated in Pennsylvania Power & Light Company (Susquehanna Steam Electric Station, Units 1 and 2), LBP-79-6, 9 NRC 291, 326 (1979):

The Commission has made it clear that financial assistance is not to be granted in a proceeding of this type. Nuclear Regulatory Commission (Financial Assistance to Participants in Commission Proceedings, CLI-76-23, 4 NRC 494 (1976)). We are bound by that ruling. See The Detroit Edison Company (Greenwood Energy Center, Units 2 and 3), ALAB-376, 5 NRC 426 (1977); Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-382, 5 NRC 603 (1977).

More recently, the Commission again determined that it lacks authority to provide such relief. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-19, 11 NRC 700 (1980).

^{21/} 10 C.F.R. §2.714(a)(2) (emphasis added).

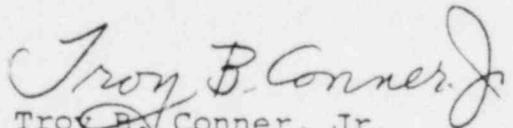
Also, there is no demonstrated need for a local Public Document Room in State College, Pennsylvania, which is 120 miles from Pottstown, Pennsylvania, where a local PDR is already established.

Conclusion

For the reasons discussed more fully above, petitioner has failed to satisfy the requirements for intervention by an organization purporting to represent the personal interest of its members. Further, it has failed to designate those aspects of the subject matter in which petitioner has such an interest. Accordingly, the petition to intervene should be denied. Applicant has no objection, however, to a limited appearance by petitioner.

Respectfully submitted,

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October 6, 1981

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PHILADELPHIA ELECTRIC COMPANY) Docket Nos. 50-352
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Environmental Coalition on Nuclear Power," in the captioned matter have been served upon the following by deposit in the United States mail this 7th day of October, 1981. A copy of Applicant's answer to the Marvin I. Lewis petition has also been served on petitioner.

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