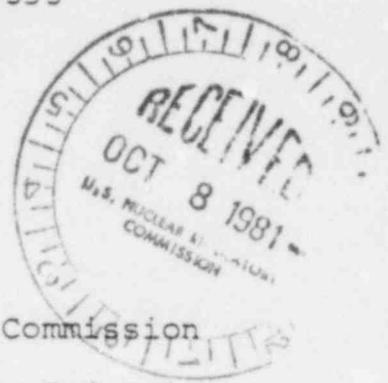


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



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 STEVEN LEVIN
PETITION TO INTERVENE

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" was filed by Steven Levin, dated August 25, 1981. ^{2/} While the filing was designated a "petition," it appears from the text that Mr. Levin intended only to express his concern about a possible economic downturn in the general area as a result of the

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

^{2/} The petition was not accompanied by an affidavit of service as required by 10 C.F.R. §2.712(e)(3). The petition was received by Applicant's counsel from the Secretary of the NRC on September 24, 1981.

Limerick facility. There is no apparent desire to participate in a formal adjudicatory proceeding. Therefore, Applicant responds herein only out of an abundance of caution although it is believed that Mr. Levin is not truly seeking party status.^{3/}

For the reasons discussed more fully below, petitioner has failed to state the requisite personal interest for intervention in an NRC proceeding. Nor has petitioner identified the "specific aspect or aspects of the subject matter of the proceeding" he 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.

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 identifiable interest in a licensing proceeding, including an explanation of how that interest would be affected by any

^{3/} For ease of reference, we shall nonetheless refer to Mr. Levin as "petitioner."

given outcome in the proceeding. This position is equally applicable to the generalized statements of petitioner 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 it relies in opposing the instant petition.^{4/}

Petitioner states that he owns a department store two miles from the Limerick facility. He is concerned that a serious accident at the plant would require him to close his store, causing him to incur substantial financial losses. Petitioner is also concerned that his business will be adversely affected by a slowdown in home buying in the area. He further states that a large number of people live and work around the plant, and that 2 1/2 million people reside within 50 miles.

The interests asserted by petitioner 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. Thus, apprehension of an adverse reaction in the community to the licensing of the plant, which petitioner alleges may cause a slowdown in home buying, is simply not within the "zone of

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

interests" cognizable under the operating statutes of the NRC.^{5/} 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,^{6/} and fail to show how petitioner personally "will or might be injured in fact by one or more of the possible outcomes of the proceeding."^{7/} Petitioner himself states his concerns as among those shared by the general populace within 50 miles of the facility, thereby confirming the generality of his interest.

Accordingly, the broad economic interests of the general public which petitioner purports to represent are not within the scope of this proceeding. The standing sought by plaintiff to litigate such broad economic issues is similar to that which the Commission has uniformly denied

^{5/} The Commission has determined that psychological stress shall not be considered in reactor licensing proceedings. See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), CLI-80-39, 12 NRC 607 (1980) (2-2 vote). In reconsidering this order, the Commissioners voted to adhere to their previous determination "to exclude psychological stress and community deterioration contentions." Id., CLI-81-20 (September 17, 1981) (slip opinion at 2).

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

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

to ratepayers.^{8/} And while petitioner believes that it would be better from an economic point of view to produce electricity from a fossil-fuel plant, such concerns are outside the "zone of interests" under the operating statutes of the NRC.^{9/} Petitioner has therefore failed to show the requisite personal interest for intervention and lacks standing.

Further, petitioner has failed to comply with the requirements for designating the "specific aspect or aspects of the subject matter of the proceeding"^{10/} in which his interest lies. As noted, the petition is simply a statement

8/ Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976); Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 243 n.8 (1980); Public Service Company of Oklahoma (Black Fox, Units 1 and 2), LBP-77-17, 5 NRC 657, 659 (1977), aff'd, ALAB-397, 5 NRC 1143, 1147 (1977); Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit 1), Docket No. 50-289 (Restart), "Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conference" (September 21, 1979) (slip opinion at 7).

9/ The Appeal Board has held that licensing boards "are not authorized . . . to require an applicant to accept or reject an alternative solely on the basis of its economic costs" because this is a business judgment for the applicant. Illinois Power Company (Clinton Power Station, Unit Nos. 1 and 2), ALAB-340, 4 NRC 27, 48 (1976). See also Consumers Power Company (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155 (1978); Portland General Electric Company (Trojan Nuclear Plant), ALAB-531, 9 NRC 263 (1979); Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 NRC 451, 456 (1980).

10/ 10 C.F.R. §2.714(a)(2).

of generalized economic concern. In the Midland proceeding, the Board stated that the requirements for properly designating such "aspects" are unclear but likely "narrower than a general reference to [the NRC's] operating statutes."^{11/} The petition does not meet even this minimal standard of specificity.

Further, as the Licensing Board stated in the TMI-1 proceeding, any subject matter alleged as an aspect must be "within the scope of the proceeding as set forth in the notice of hearing."^{12/} The economic issues discussed in the petition are not, however, cognizable in this proceeding for the reasons discussed above. 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.

Conclusion

For the reasons more fully discussed above, petitioner has failed to satisfy the requirements for intervention of establishing a personal interest in the outcome of the proceeding and designating those aspects in which he has such an interest. Accordingly, the petition to intervene

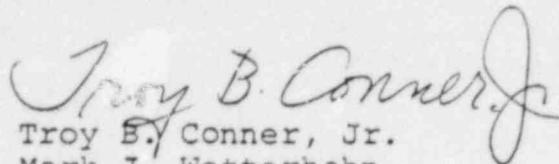
^{11/} Consumers Power Company (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978).

^{12/} Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289 (Restart), "Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conference" (September 21, 1979) (slip opinion at 6).

should be denied. Applicant has no objection, however, to a limited appearance by petitioner pursuant to 10 C.F.R. §2.715(a).

Respectfully submitted,

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October 5, 1981

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NUCLEAR REGULATORY COMMISSION

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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 Steven Levin Petition to Intervene," in the captioned matter have been served upon the following by deposit in the United States mail this 5th 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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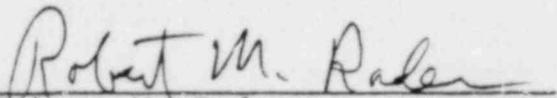
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