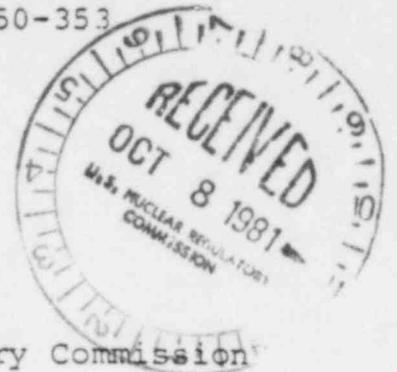


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



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 KEYSTONE  
ALLIANCE 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"). <sup>1/</sup>

In response to the Notice, a petition for intervention was filed by the Keystone Alliance ("Keystone") on September 18, 1981. The petition was signed by Alan J. Noguee, who also filed an affidavit stating that he is the duly authorized representative of Keystone and attesting to the veracity of the petition. The petition was not supported by the statements of individual Keystone members asserting an interest in the proceeding.

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

For the reasons discussed more fully below, petitioner Keystone 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).<sup>2/</sup> In other words, an organizational petitioner must establish that at least one of its members has legal standing to intervene in this proceeding under the rules applicable to individual petitioners.

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<sup>2/</sup> 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).

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 given outcome in the proceeding. This position is equally applicable here. 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 <sup>additional</sup> authorities upon which it relies as to the requisite personal interest for standing. <sup>3/</sup>

The Keystone petition states that its members "reside and/or own property within a 10 mile radius of the Limerick generating station, as well as a larger area out to approximately 50 miles from the Limerick station." <sup>4/</sup> However, the petition is not supported by the statement of any Keystone member attesting to this fact or otherwise stating facts sufficient to demonstrate his personal interest in the proceeding. Instead, the petition simply states in general terms that Keystone members are "interested in the protection of themselves and their neighbors" from alleged nuclear

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<sup>3/</sup> Petitioner herein has been served a copy of Applicant's answer to the Lewis petition.

<sup>4/</sup> Keystone petition at 1.

hazards.<sup>5/</sup> However, Keystone's mere exhibition of a "special interest" in the protection against radiation hazards is not a basis for intervention because 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."<sup>6/</sup>

The failure of Keystone to delineate the interests of its members is therefore fatal to the petition. In the Allens Creek decision in ALAB-585, the Appeal Board emphasized that the Licensing Board "was not merely entitled but obligated to satisfy itself that there was at least one member of the [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

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<sup>5/</sup> Keystone petition at 1. The petition also states that Keystone has been an active intervenor in rate cases involving PECO before the Pennsylvania Public Utility Commission. Of course, rate matters are beyond the jurisdiction of the NRC and are therefore outside the "zone of interests" permissible as a basis for intervention in a licensing proceeding. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-21, 4 NRC 610, 614 (1976); 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).

<sup>6/</sup> 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 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."<sup>7/</sup> 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 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.

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Absent disclosure of the name and address of one such member, it is not possible to verify the assertion that

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<sup>7/</sup> ALAB-585, 9 NRC at 391-92.

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 in [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. 8/

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."<sup>9/</sup> In Waterford, the Board similarly stated that

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

9/ Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979).

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.<sup>10/</sup> 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."<sup>11/</sup>

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.<sup>12/</sup> And in Comanche Peak, the Licensing Board reiterated that while an organization can establish

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<sup>10/</sup> 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).

<sup>11/</sup> 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).

<sup>12/</sup> Consumers Power Company (Big Rock Point Nuclear Plant), Docket No. 50-155, "Memorandum and Order" (September 25, 1979) (slip opinion at 4).

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 . . . ." <sup>13/</sup> Accordingly, the apparent belief held by Keystone's counsel that its membership possesses the requisite personal interest necessary for intervention, merely on the basis of Keystone's "special interest" in certain areas, is insufficient as a matter of law for intervention.

Finally, Keystone 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 petition wishes to intervene." <sup>14/</sup> The aspects designated by Keystone merely outline general areas of subject matters in more or less "table of contents" fashion. These designated "aspects" are entirely too vague to constitute compliance with the standard of specificity contained in 10 C.F.R. §2.714(a)(2).

As a final matter, petitioner's request to consider "aspects" regarding the availability of water supplies related to Limerick may not be heard because this matter lies within the plenary jurisdiction of the Delaware River

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<sup>13/</sup> Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728, 729 (1979).

<sup>14/</sup> 10 C.F.R. §2.714(a)(2).

Basin Commission, see generally Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163 (1975), which has granted final approval to the supplemental cooling water plan for Limerick.<sup>15/</sup> This action of the DRBC was approved by the United States District Court for the Eastern District of Pennsylvania on August 17, 1981. Moreover, this matter was fully "ventilated and resolved at the construction permit stage" and petitioner has not made "any supported assertion of changed circumstances or the possible existence of some special public interest factors in the particular case." Alabama Power Company (Joseph M. Farley Nuclear Plant, Units 1 and 2), CLI-74-12, 7 AEC 203 (1974).<sup>16/</sup>

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<sup>15/</sup> It may be noted that permits related to the Point Pleasant project itself, specifically for the Point Pleasant intake structure and for the Chalfont waste treatment plant, are now pending before the United States Corps of Engineers.

<sup>16/</sup> Without conceding the validity of other aspects pleaded, it is clear that certain other matters are beyond the jurisdiction of this Licensing Board. Thus, issues pertaining to siting may not be heard because consideration of alternative site selection at the operating license stage is precluded under the new Section 51.53(b) and Appendix A to Part 51. Transportation of nuclear materials to and from the Limerick facility is also not a matter within this proceeding since it would have to be authorized by separate licensing under 10 C.F.R. Parts 30, 40 and 70. See Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 30 (1974).

The ultimate disposition of reactor waste is currently the subject of NRC rulemaking. See 44 Fed. Reg. 61372 (October 25, 1979). As a generic issue to be determined by the Commission, it is not for consideration by individual

(Footnote <sup>16/</sup> continued on next page)

Conclusion

For the reasons discussed more fully below, petitioner has failed to satisfy the requirements for intervention by an organization purporting to represent the personal interests of its members. Further, it has failed to designate those aspects of the subject matter in which petitioner has such

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16/ (continued)

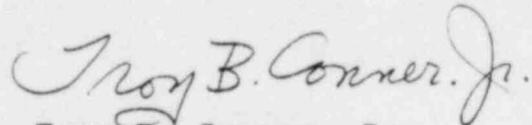
licensing boards. The Commission's notice of rule-making followed a decision by the Court of Appeals in the State of Minnesota v. United States Nuclear Regulatory Commission, 602 F.2d 412 (D.C. Cir. 1979), which sustained dismissal of a contention regarding ultimate waste disposal in Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41 (1978). In reciting these events, the Licensing Board in the Allens Creek proceeding stated that it was "bound by the Commission's decision" in dismissing a similar contention. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), Docket No. 50-466, "Order" (March 10, 1980) (slip opinion at 37-38). See also Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), Docket Nos. 50-338 SP and 50-339 SP, "Order Denying Intervenors' Motion to Amend Petition to Intervene" (August 17, 1979).

Also, "economics of available alternatives" may not be considered. 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), ALA-340, 4 NRC 27, 48 (1976); 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).

an interest. Accordingly, the petition to intervene 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

UNITED STATES OF AMERICA  
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 Keystone Alliance 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.

Judge Lawrence J. Brenner  
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Judge Peter A. Morris  
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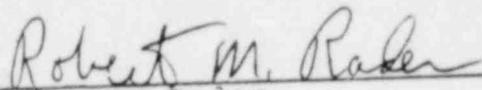
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