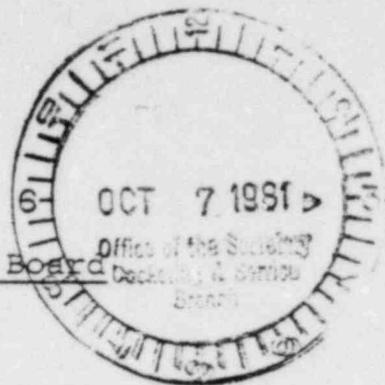


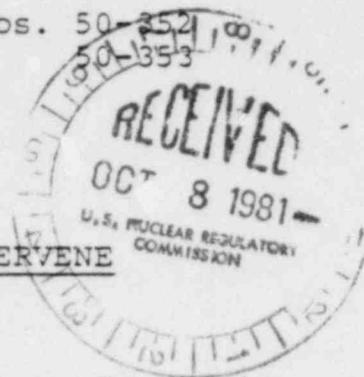
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Before the Atomic Safety and Licensing Board

In the Matter of)
)
Philadelphia Electric Company)
)
(Limerick Generating Station,)
Units 1 and 2))

Docket Nos. 50-3521
50-353



APPLICANT'S ANSWER TO
JOSEPH H. WHITE, III 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 for intervention was filed by Joseph H. White, III on September 21, 1981. A list of proposed contentions was also attached. For the reasons more fully discussed below, petitioner herein 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

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

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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 of the proceeding.

Petitioner states that the "close proximity of my work and living spaces, as well as my plans not to leave the area constitute my interest in the Limerick plant."^{2/} It is the Applicant's view, however, that mere proximity to the facility, without more, is an insufficient basis for standing to intervene. 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 to the generalized statements of petitioner White herein. Rather than furnish the Licensing Board with repetitive pleadings, Applicant hereby incorporates and respectfully

^{2/} White petition at 1.

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.^{3/}

The other interests asserted by petitioner are either beyond those considered by the Commission in its licensing proceedings or too remote to satisfy standing requirements under the decisions of the Commissioners and the judicial precedents those cases have adopted as the applicable law. For example, petitioner asserts that his employment as a mover will be threatened by the operation of the Limerick plant because people may refuse to buy homes, presumably in the Philadelphia area. Community reaction to the operation of a nuclear facility, i.e., possible "community deterioration," is simply not within the "zone of interests" cognizable under the operating statutes of the NRC.^{4/}

Also, any evaluation of possible community reaction to issuance of operating licenses for Limerick would necessarily involve prohibited speculation. The Supreme Court has held that such speculative or conjectural injury in fact does not satisfy standing requirements.^{5/}

^{3/} Petitioner herein has been served a copy of Applicant's answer to the Lewis petition.

^{4/} 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 1), Docket No. 50-289 (Restart), CLI-81-20 (September 17, 1981).

^{5/} See Simon v. Kentucky Welfare Rights Organization, 426 U.S. 26, 43 (1976); Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 262 (1977); Linda R.S. v. Richard D., 410 U.S. 614, 619 (1975).

There is no explanation of or apparent basis for petitioner's assertion that "extensive heirlooms" belonging to his parents would be threatened by an accident at the Limerick plant. In any event, petitioner lacks standing to argue the interests of his parents,^{6/} and his own interests as a possible heir are simply too remote and speculative to satisfy the requirement of injury in fact.

Another interest suggested by petitioner, that of "higher electric rates," is also an assertion of a third-party interest, i.e., industrial users, which was specifically rejected as a basis for intervention in the TMI-1 proceeding.^{7/} Further, this subject has uniformly been excluded from NRC cases as an economic issue beyond the

6/ As the Court stated in Warth v. Seldin, 422 U.S. 490, 499 (1975), a party "generally must assert his own legal rights and interests and cannot rest his claims on the legal rights or interests of third parties." Again, in Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 166 (1972), the Court stated that a party "has standing to seek redress for injuries done to him, but may not seek redress for injuries done to others." In Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977), the Commission adopted the Warth test for standing. See also Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977); Singleton v. Wulff, 428 U.S. 106 (1976); Broadrick v. Oklahoma, 413 U.S. 601 (1973); United States v. Raines, 362 U.S. 17 (1960).

7/ Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 1), Docket No. 50-289 SP (Restart), "Memorandum and Order Denying Petition to Intervene of Victaulic Company, et al." (September 2, 1980) (slip opinion at 3).

Commission's jurisdiction.^{8/} Another interest asserted by petitioner, that of "great stress," is not likewise cognizable under the operating statutes of the NRC.^{9/}

Petitioner's asserted interest in the purchase of foodstuffs and durable goods which are purchased from locations nearby the Limerick plant is likewise shared in common with the general public. Petitioner's consumption of food and goods purchased in that area is certainly not the kind of particularized, personal interest necessary for intervention.^{10/} Petitioner has therefore failed to demonstrate the personal interest in the outcome of this proceeding necessary for standing.

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 No. 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/ See note 4, supra.

10/ See Applicant's answer to Lewis petition. Petitioner's vague assertion that he lives "within the 'ingestion pathway EPZ'" (White petition at 1) is clearly insufficient to establish any kind of concrete, particularized interest in the proceeding. It is clear that the ingestion pathway Emergency Planning Zone referred to in 10 C.F.R. Part 50, Appendix E relates to the area in which possible actions by governmental agencies for control of foodstuffs may be necessary and has no relation per se to the mere presence of an individual within that zone.

Petitioner has further failed to designate "the specific aspect or aspects of the subject matter of the proceeding"^{11/} for which he seeks intervention. The body of the petition itself is simply a generalized statement of his concern for the safe operation of the Limerick facility. To the extent that the proposed contentions may be deemed to express petitioner's designated "aspects," many of the matters are beyond the jurisdiction of the Board because they are not "within the scope of the proceeding as set forth in the notice of hearing."^{12/} For example, matters pertaining to the transport of waste and driver training^{13/} and alleged stress upon the local population^{14/} may not be considered at all.

The remaining contentions merely state possible areas petitioner wishes to explore, but fail to designate "specific aspects" thereof. As such, those contentions are not

^{11/} 10 C.F.R. §2.714(a)(2).

^{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).

^{13/} Transportation of spent fuel away from Limerick would have to be authorized pursuant to 10 C.F.R. Part 70 and is therefore beyond the scope of the instant proceeding. Philadelphia Electric Company (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 30 (1974).

^{14/} See note 4, supra. Also, for the reasons discussed in Applicant's answer to the Lewis petition at page 15, footnote 23, petitioner's allegations regarding a possible electromagnetic pulse are likewise excludable.

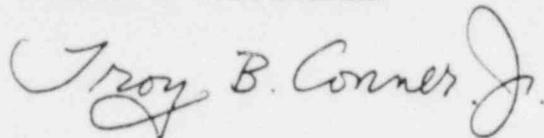
"narrower than a general reference to our operating statutes."^{15/}
Moreover, given the standing requirements discussed above, all aspects alleged by petitioner, including any contentions thereunder, must necessarily be limited to the demonstrated "injury in fact," if any.

Conclusion

For the reasons more fully discussed above, petitioner has failed to satisfy the requirements of establishing a personal interest in the outcome of the proceeding and designating those aspects in which petitioner has such an interest. Accordingly, the petition to intervene should be denied. Applicant has no objection, however, if petitioner wishes to make a limited appearance pursuant to 10 C.F.R. §2.715(a).

Respectfully submitted,

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October 6, 1981

^{15/} Consumers Power Company (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978).

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NUCLEAR REGULATORY COMMISSION



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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to J.H. White, III Petition to Intervene," in the captioned matter have been served upon the following by deposit in the United States mail this 6th 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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