

could be adversely affected by the outcome of this proceeding. See 10 C.F.R. §§2.714(a)(2), 2.714(d) (1982). It is well settled that no such interest shall be presumed; Petitioner must make a concrete demonstration that its interests may be harmed by the outcome of the proceeding. Nuclear Engineering Co., Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 N.R.C. 737, 743 (1978).

3. In its amendment, Petitioner alleges both its institutional interests and interests of its individual members. Petitioner alleges that since its activities include educational outings and research in areas within fifty miles of Marble Hill, "there are demonstrable environmental, health, and recreational interests of the organization affected by the outcome of the proceeding." Further, Petitioner asserts that the organization "suffers recreational and aesthetic 'injury in fact' because its programming includes, and its members use, the land in the potentially impacted area of the plant." As the representative of the interests of three of its members, Petitioner alleges that because these three members live just within a 50 mile radius of the plant, their "pursuit of normal and recreational activities could be affected." In the affidavits of these members, each affiant states "[t]hat my

environmental, recreational, health, and property interests are affected by the outcome of the Operating Licensing proceedings for Marble Hill Units 1 and 2."

4. It is well established that an organization can assert standing to intervene either as an institution or as a representative of its members. Warth v. Seldin, 422 U.S. 490, 511 (1975); Edlow International Co. (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 N.R.C. 563, 572-74 (1976). In one capacity or the other, however, Petitioner must satisfy both the "injury in fact" test and "zone of interest" test to establish standing as a matter of right. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 N.R.C. 610, 613-14 (1976). See Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 153 (1970).

5. Either as an institution and or as the representative of its members, Petitioner has failed to satisfy the injury in fact requirement of standing. To satisfy this requirement, "[a] plaintiff must allege that he has been or will in fact be perceptibly harmed by the challenged agency action, not that he can imagine circumstances in which he could be affected by the agency's action." United States v. Students Challenging Regulatory

Agency Procedures (SCRAP), 412 U.S. 669, 688-89 (1973).

Petitioner has not made the required concrete demonstration that harm will flow to it or its members from a result unfavorable to its position. See Nuclear Engineering Co., 7 N.R.C. at 743. Petitioner's most complete allegation of any potential harm is that it suffers "recreational and aesthetic 'injury in fact'" because it and its members use land within fifty miles of the plant. Such general allegations are not a sufficient basis on which standing to intervene can be found, because they present nothing more than generalized grievances that are shared in substantially equal measure by a large class of citizens. See Warth v. Seldin, 422 U.S. at 499; Edlow International Co., 3 N.R.C. at 576.

6. Since Petitioner has not alleged with particularity how its interests may be harmed by the outcome of this proceeding, it has failed to demonstrate that it has a direct stake in the outcome of this proceeding and that it is not seeking merely to vindicate its own value preferences. See Sierra Club v. Morton, 405 U.S. 727, 740 (1972); Nuclear Engineering Co., 7 N.R.C. at 741-43; Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 N.R.C. 420, 421-23 (1976). As recommended in Allied-General Nuclear Services, 3 N.R.C. at 423, Petitioner should have supplied affidavits from its members that

contained an explanation of specific interests and how they could be harmed by the outcome of this proceeding.

7. Petitioner's lack of any direct interest in this proceeding is underscored by the affidavits of its individual members. Presumably, Petitioner has sought affidavits from individuals who live as close to Marble Hill as possible. It has submitted affidavits from three residents of Columbus, Indiana. According to our calculations, the city limits of Columbus is 47 miles from the Marble Hill site. Petitioner alleges that those three members' "pursuit of normal and recreational activities could be affected." Such a general allegation is an insufficient basis for standing. Although a finding of standing has not been precluded when based upon residence 50 miles from a plant site, Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 N.R.C. 1418, 1421 n.4 (1977), Petitioner must still demonstrate how it or its members could be harmed by the outcome of this proceeding. A general allegation of residence within 50 miles of the site does not provide a basis for standing. Only when very close geographical proximity to the facility is demonstrated will such an allegation, without more, be found sufficient to establish standing. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522,

9 N.R.C. 54, 55-56 (1979) (members resided "little more than a stone's throw" from the plant).

8. Until Petitioner satisfies the injury in fact test, it is unnecessary to consider whether the interests it asserts are within the zone of interests protected or or regulated by the statutes governing the NRC. Public Service Company of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), CLI-80-10, 11 N.R.C. 438, 439 (1980).

9. The history of Petitioner's participation at the construction permit stage of this proceeding causes further concern about whether Petitioner has a direct stake in this proceeding. At the construction permit stage, Petitioner was permitted to intervene, only after providing more specific allegations than presented herein, and was later consolidated with other intervenors as Joint Intervenors. See Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), LBP-77-52, 6 N.R.C. 294, 298 (1977). Joint Intervenors, however, failed to file any testimony in support of their contentions and did not participate in any phase of the evidentiary hearing. Joint Intervenors also failed to file any proposed findings of fact or conclusions of law based on the record developed by the other parties. After repeatedly requesting Joint Intervenors to explain why they should be allowed to

continue as parties, the Licensing Board dismissed Joint Intervenors as parties to the proceedings. Id. at 300-01. Given that dismal record of prior participation, the Licensing Board must strictly scrutinize the allegations and intent of Petitioner. Being admitted as an intervenor cannot become an end in itself, but Petitioner must have specific interests at stake and must stand prepared to contribute meaningfully to the proceeding. Since Petitioner alleges only generalized grievances, it seems improbable that Petitioner will participate in, or contribute to, this proceeding to an extent greater than it did at the construction permit stage.

10. If the Board determines that Petitioner's members residing within fifty miles of the plant may have some legitimate interest affected by this proceeding, it should not routinely grant intervention but require each of them to attend the first prehearing conference to articulate the potential harm to his or her interest. See, e.g., Virginia Electric and Power Co., 9 N.R.C. at 55. Such a procedure would allow the Board to probe the extent and genuineness of these interests.

11. Applicants once again reserve their rights to object to the contentions that Petitioner seeks to have litigated in this proceeding until after Petitioner's standing has been determined.

Conclusion

For the foregoing reasons, Applicants request that the amended petition for leave to intervene filed by the Indiana Sassafras Audobon Society be denied.

Respectfully submitted,

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August 8, 1983

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

PUBLIC SERVICE COMPANY)
OF INDIANA, INC.)

WABASH VALLEY POWER)
ASSOCIATION, INC.)

(Marble Hill Nuclear)
Generating Station,)
Units 1 & 2))

Docket Nos. STN 50-546
STN 50-547

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of August 1983, served copies of the foregoing document, entitled "Applicants' Answer to Amendment to Petition for Leave to Intervene Filed by the Indiana Sassafras Audubon Society," by hand delivering and by mailing first class, postage prepaid and properly addressed, copies thereof to the following:

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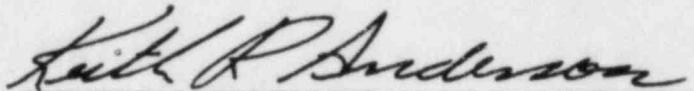
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