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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION '82 NOV 23 P1:47

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:  
Sheldon J. Wolfe, Chairman  
Dr. Jerry R. Kline  
Dr. George A. Ferguson

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

SERVED NOV 23 1982

In the Matter of

VIRGINIA ELECTRIC AND POWER COMPANY

(North Anna Power Station,  
Units 1 & 2)

Docket Nos. 50-338 OLA-1  
50-339 OLA-1

November 22, 1982

MEMORANDUM AND ORDER

(Provisionally Ordering A Hearing and Granting  
Petitions For Leave To Intervene)

MEMORANDUM

On September 22, 1982, the Nuclear Regulatory Commission published a "Proposed Issuance of Amendments to Facility Operating Licenses" to permit the receipt and storage by the North Anna Power Station, Units 1 and 2, of 500 spent fuel assemblies from the Surry Power Station, Units 1 and 2. 47 Fed. Reg. 41892. On October 22, 1982, two petitions for leave to intervene were filed by (1) the Concerned Citizens of Louisa County (Citizens) and by (2) the County of Louisa, Virginia, and the Board of Supervisors of the County of Louisa, Virginia (Louisa County). The petitioners requested leave to intervene and a hearing. Applicant filed its answer on November 2 and the NRC Staff filed its response on November 12, 1982.

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## I. Discussion

10 C.F.R. § 2.714(a)(2) requires that a petition for leave to intervene set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why the petitioner should be permitted to intervene, and the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene. This section also requires that the petition should make particular reference to the following factors in § 2.714(d):

The Commission, the presiding officer or the atomic safety and licensing board designated to rule on petitions to intervene and/or requests for hearing shall, in ruling on a petition for leave to intervene, consider the following factors, among other things:

- (1) The nature of the petitioner's right under the Act to be made a party to the proceeding.
- (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

With regard to case law, in Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613 (1976), the Commission stated that to have standing, a petitioner must satisfy two tests - one, some injury must be alleged that has occurred or will probably result from the action involved, and, second, an interest must be alleged that is "arguably

within the zone of interest" protected by the statute. Indeed, close proximity has always been deemed to be enough, standing alone, to establish the requisite interest. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979). Where an organization's standing hinges upon its being the representative of a member who has the requisite affected personal interest, it is obviously important that there be some concrete indication that, in fact, the member wishes to have that interest represented in the proceeding. Unless an organization's charter provides to the contrary, mere membership in it does not ordinarily constitute blanket authorization for the organization to represent any of the member's personal interests it cares to without his or her consent. However, in some instances it might be presumed as where it appeared that the sole or primary purpose of the petitioner organization was to oppose nuclear power in general or the facility in particular. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 396 (1979).

A. Concerned Citizens of Louisa County

Petitioner (Citizens) asserts that it is a non-profit organization consisting of approximately seventy persons and that it was established because of its members' concerns over threats to the health and safety and to the environment which may be posed by the operation of the North Anna plant. Citizens submits that it has

standing since most, if not all, of its members reside within twenty miles of the North Anna plant. More particularly, Citizens identifies four families and/or individuals which, as members, have authorized it to represent their interests in the proceeding.

While petitioners under § 2.714 of our Rules of Practice are not required to submit contentions until 15 days prior to the special prehearing conference required under § 2.751a, Citizens has set forth eight contentions which it states it intends to amend and/or supplement in the near future. Pursuant to § 2.714(a)(3), because Citizens has the right to amend its petition later (and any contentions set forth therein), and because it may supplement its petition to list contentions pursuant to § 2.714(b), it would be premature for the Board to rule upon the adequacy of these eight contentions as issues in controversy. Consumers Power Company (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978). We have, however, evaluated the contentions to determine whether any of them specify proper aspects for this proceeding. Contention number 8 meets the "aspect" requirement in alleging that the proposed license amendment may not be granted prior to the preparation of an environmental impact statement. Since the "aspect" requirement has been met, we need not rule whether the balance of the numbered contentions meet the "aspect" requirement.

We conclude that Citizens has satisfied the "interest" and "aspects" requirement of 10 C.F.R. § 2.714, and thus has established "standing."

B. County of Louisa and the Board of Supervisors

The Board of Supervisors asserts that it is responsible for protecting the well-being of the inhabitants, property and environment of Louisa County and that the County's citizens are the ones who will experience most directly any adverse economic, health and safety, or environmental consequences flowing from a Commission decision to allow storage of Surry spent fuel at North Anna or expansion of the North Anna spent fuel pool.

The petitioner also set forth four contentions which it will supplement pursuant to § 2.714(b). Because, as explained above, it would be premature to rule upon the adequacy of any contentions at this time, we have only evaluated them to determine whether any of them specify proper aspects for this proceeding. Contention number 2 meets the "aspect" requirement in alleging, in substance, that Applicant's environmental analysis is insufficient in focusing narrowly on the receipt and storage at North Anna of Surry spent fuel assemblies. We need not rule whether the balance of the numbered contentions meet the "aspect" requirement.

We conclude that the County of Louisa and the Board of Supervisors have satisfied the "interest" and "aspects" requirement of 10 C.F.R. § 2.714, and thus have established "standing."

In passing, we note that the County of Louisa requests that the instant proceeding be consolidated with another proceeding wherein Applicant has applied for an amendment to its North Anna operating

licenses that would authorize the expansion of the spent fuel pool capacity for the North Anna Station, Units 1 and 2. It also requests that various issues be heard in the consolidated proceeding. The request is premature because contentions have not been finalized, because the Board has not ruled upon their admissibility and because the Board has not yet decided whether hearings will be held in each proceeding.

ORDER

For the foregoing reasons, it is, this 22nd day of November 1982,

ORDERED

1. That a hearing is ordered upon the application for an amendment of the operating licenses to permit the receipt and storage of the North Anna Power Station, Units 1 and 2, of 500 spent fuel assemblies from the Surry Power Station, Units 1 and 2. A notice of hearing to this effect will be issued in the near future. At that time the Board will also schedule a prehearing conference pursuant to § 2.751a.


2. That petitions for leave to intervene of the Concerned Citizens of Louisa County, and of the County of Louisa, Virginia and the Board of Supervisors of the County of Louisa, Virginia are granted.

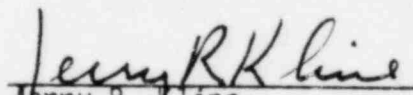
3. That this action, in ordering a hearing and granting the petitions for leave to intervene, is provisional because the Board

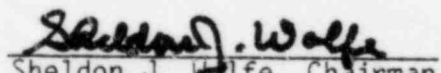
cannot rule upon the admissibility of contentions and upon the need for an evidentiary hearing until after the special prehearing conference required under § 2.751a. Therefore, the Board will not enter the order referred to in § 2.714a pertaining to appeals on petition rulings until later. Therefore this action is not appealable under that section.

4. That Louisa County's request for consolidation is denied without prejudice.

THE ATOMIC SAFETY AND  
LICENSING BOARD

  
George A. Ferguson  
ADMINISTRATIVE JUDGE

  
Jerry R. Kline  
ADMINISTRATIVE JUDGE

  
Sheldon J. Wolfe, Chairman  
ADMINISTRATIVE JUDGE

Dated at Bethesda, Maryland  
this 22th day of November, 1982.