

09/17/81

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. 50-352  
50-353



NRC STAFF RESPONSE TO PETITIONS TO  
INTERVENE AND REQUEST FOR HEARING OF  
MARVIN I. LEWIS, AIR AND WATER  
POLLUTION PATROL AND CHARLES BRUCE TAYLOR

I. INTRODUCTION

On August 21, 1981, the Nuclear Regulatory Commission published in the Federal Register <sup>1/</sup> a notice of opportunity for hearing concerning the application by Philadelphia Electric Company for operating licenses for the Limerick Generating Station, Units 1 and 2, presently under construction near Pottstown, Pennsylvania. The notice stated that requests for hearing and petitions to intervene could be filed by September 21, 1981. In response to the notice, the Commission received timely petitions to intervene from Marvin I. Lewis, the Air and Water Pollution Patrol (AWWP) and Charles Bruce Taylor.

II. DISCUSSION

Section 2.714 of 10 C.F.R. describes the four requirements for a legally sufficient petition to intervene. The petition must be timely or satisfy specified factors showing good reason for granting a nontimely petition

<sup>1/</sup> 46 Fed. Reg. 42557

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[§ 2.714(a)(1)]. The petition must set out the interest of the petitioner.<sup>2/</sup>  
[§ 2.714(a)(2) and (d)]. The petition must state the specific aspect of the subject of the proceeding in which the petitioner wishes to intervene  
[§ 2.714(a)(2)]. The petitioner must file a supplement to the petition listing the contentions (issues) he or she wishes to litigate. Each contention must include a specific basis and the supplement must be filed at least 15 days prior to the special prehearing conference. [§ 2.714(b)].<sup>3/</sup>

A. Interest or Standing

To support standing to intervene, one must show that the action being challenged could cause injury-in-fact to the person seeking participation and that the alleged injury is within the zone of interests protected by the statute governing the proceeding. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-26, 4 NRC 610, 613-14 (1976) citing: Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970). The pertinent statutes here are the Atomic Energy Act of 1954, as amended,<sup>4/</sup> the Energy Reorganization Act of 1974 as amended<sup>5/</sup> and the National Environmental Policy Act of 1969, as amended<sup>6/</sup> (NEPA). An

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<sup>2/</sup> Interest is a legal term of art meaning judicial standing or legal right to challenge an action.

<sup>3/</sup> The conference is scheduled by the Licensing Board after petitions are filed.

<sup>4/</sup> 42 U.S.C. § 2011 et seq. (P.L. 83-703).

<sup>5/</sup> 42 U.S.C. § 5801 et seq. (P.L. 93-438).

<sup>6/</sup> 42 U.S.C. § 4332 et seq. (P.L. 91-190).

alleged potential injury must be particularized to the petitioner and not one which is shared in substantially equal measure by all or a large class of citizens. Edlow International Co., CLI-76-6, 3 NRC 563, 576 (1976). However, where petitioners do not meet the tests for intervention as a matter of right, adjudicatory boards may exercise discretion in ruling on questions of participation where petitioners show significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, have set forth these matters with suitable specificity to allow evaluation, and demonstrate their importance and immediacy, justifying the time necessary to consider them. Pebble Springs, supra, 614-617.

The Commission's case law has determined that sufficient interest or standing is shown by a petitioner's residence within a fifty-mile radius of the plant-an area which could be affected by routine or accidental release of fission products from the plant where a specific personal injury is alleged to result from the proceeding. Tennessee Valley Authority (Watts Bar Nuclear Generating Station, Unit 1), ALAB-413, 5 NRC 1418. n.4 (1977); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 n.6 (1973); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-197, 6 AEC 188 (1973); Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station), ALAB-535, 9 NRC 377, 393 (1979); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1976). In addition to nearby residence, the pursuit of normal and recreational activities near the site has also been viewed as sufficient to support standing. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226

(1974); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-73-10, 6 AEC 173 (1973).

Where an organization petitions to intervene, it must either show that the group itself has standing or that at least one of its members has standing and that the organization has been authorized to represent that member.

Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 11 NRC 377 (1979); Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 645 (1979); Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 329 (1976). See: Warth v. Seldin, 422 U.S. 490, 511 (1976) and Sierra Club v. Morton, 405 U.S. 727, 740 (1972).

Since the Commission's authority extends only to matters of public health and safety or environmental impacts under the enabling statutes, allegations as to economic harm are not sufficient to show standing.

Kansas Gas and Electric Co. et al. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 (1977), Watts Bar, ALAB-413, supra, 1420-21; Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-376, 5 NRC 426 (1977); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804 (1976).

B. Specific Aspect of the Proceeding

Rather than just a generalized interest in the proceeding as a whole, the petitioner is required to state a particular area or subjects under review which the petitioner seeks to litigate. The indication of the petitioner's area(s) of special concern need not be in the form of a legal issue but should identify the subject matter which the petitioner intends to pursue

when submitting formal contentions, so that the Board and parties are put on notice of the particular aspect of the proceeding being challenged.

Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978).

### III. THE PETITIONS

#### Marvin I. Lewis

The petition to intervene filed by Marvin I. Lewis, dated August 28, 1981 and postmarked September 3, 1981 is timely filed. As evidence of his standing to intervene, Mr. Lewis states that he resides in northeast Philadelphia, Pennsylvania, that his residence is in the plume ingestion pathway, that his health and safety would be at risk in the event of accident at the Limerick plant; that he often travels in the Limerick area on business and personal trips; and that his financial interests would be threatened in the event of accident at Limerick because his pension fund is heavily invested in Philadelphia Electric Company (PECo).

Mr. Lewis, in his petition to intervene, designates his specific areas of interest in the proceeding for which he wishes to intervene, as "radio-nuclides in air and water and perhaps food" in the event of accident; and a potential safety hazard in traveling to the Limerick plant area in the event of accident.<sup>7/</sup>

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<sup>7/</sup> Mr. Lewis also submitted a list of contentions along with his petition to intervene. Since contentions may be submitted any time until 15 days prior to the special prehearing conference, the Staff will postpone its response to these contentions until the final date for submitting contentions has been established.

The Staff believes that Mr. Lewis has demonstrated standing to intervene on the basis of business near the plant and nearby residency since Philadelphia is within a 50 mile radius of the Limerick site, as well as an indication of potential injury-in-fact in the event of serious accident at the plant. Further, Mr. Lewis has indicated his specific area of interest in the proceeding. Therefore, the Staff is of the opinion that Mr. Lewis has complied with the requirements of 10 C.F.R. §§ 2.714(a)(1), 2.714(2) and 2.714(d) by demonstrating standing to intervene and describing a specific area of interest in the proceeding. As discussed above, before admission as a party, at least one of Mr. Lewis' contentions must be admitted for litigation.

Air and Water Pollution Patrol (AWWP)

By a document dated September 3, 1981 Mr. Frank R. Romano, as Chairman of an organization termed the Air and Water Pollution Patrol, also designated by the acronym "AWWP", filed a timely petition to intervene in this proceeding and a request for hearing on behalf of this organization described as one whose members are concerned with adverse effects of nuclear reactor operation. Mr. Romano states that he is a United States citizen who resides in Ambler, Pennsylvania which is located within ten miles of the Limerick plant site. Additionally, attached to the petition are four affidavits of persons who state they are members of AWWP who also live or work within twenty miles of the Limerick plant site.

Mr. Romano further states in the petition that the AWWP is concerned about the effect of routine and accidental releases of fission products from the Limerick plant on its members. The specific areas of interest in the proceeding described by Mr. Romano are: contamination of the Schuylkill River which is the source of drinking water for members of AWWP,



erroneous population safety calculations, deficiencies in construction and operation methods, workable evacuation, terrorist attacks, plant sabotage, site selection, and several others.

The four affidavits of AWWP members attached to this petition verify that Mr. Romano is Chairman of AWWP and has been given their permission to represent them in this proceeding.

Based on the above demonstration of personal standing due to the nearby residency of the several members of AWWP who allege a potential injury-in-fact as a result of this proceeding; the specified areas of interest of AWWP in this proceeding, and a showing of the authorization by members of AWWP for Mr. Romano to represent the interests of AWWP in this proceeding, the Staff believes that following the timely submission of one or more admissible contentions by supplement to the AWWP petition to intervene, AWWP will have satisfied the requirements to be admitted as a party to the proceeding.

Charles Bruce Taylor

By letter dated August 26, 1981<sup>8/</sup> Mr. Taylor petitions to intervene in this proceeding. Mr. Taylor states that he resides within five miles of the Limerick plant site, at Collegetown, Pennsylvania; that the "proceeding's business directly [a]ffects the personal safety of his family, the value of [his] property and the welfare of the community in which [they] live."

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<sup>8/</sup> The letter of Mr. Taylor is addressed to the Secretary of the Commission where it was docketed by the Secretary on August 31, 1981, but it was not received by the Office of the Executive Legal Director until September 10, 1981. There is no indication in Mr. Taylor's letter that he served any other party. Staff counsel provided copies to Applicant and the Board as an enclosure to its letter of September 15, 1981 addressed to the members of the Licensing Board.

Further, he states that the specific aspect of the proceeding for which he wishes to intervene is the "relationship and responsibility to the surrounding communities in the Limerick area" of Philadelphia Electric Company. He also states that he has no technical expertise but wishes to voice his concern about the relationship between the Applicant and the small rural citizenry.

The Staff believes that Mr. Taylor has failed to demonstrate standing to intervene by failure to describe any specific potential injury-in-fact since he merely states that the proceeding's business affects his family's personal safety. Mr. Taylor has not specified any manner in which he asserts a potential harm from the licensing proceeding, and thus has only alleged that he resides near the plant and that his safety will be affected in an undefined way by this proceeding's consideration of an operating license for the Limerick plant. Further, Mr. Taylor has failed to clearly specify an aspect of this proceeding as his particular interest and concern. His description of the area of his interest as the relationship and responsibility of the Applicant to nearby communities is too vague to designate an aspect of this proceeding since it is not clear as to what sort of relationship and responsibility of the Applicant Mr. Taylor refers. Thus, it is impossible to determine whether or not this area of interest is encompassed by this operating license proceeding. The Staff believes Mr. Lewis has not complied with 10 C.F.R. § 2.714(a)(2) which requires that petitioners state with particularity the interest of the petitioner in the proceeding and how that interest



may be affected, as well as the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.<sup>9/</sup>

Although Mr. Taylor has failed to demonstrate standing to intervene as of right under judicial standing concepts and NRC precedent, as noted at page 3 above, adjudicatory boards may exercise discretion in ruling on questions of participation after weighing various factors enumerated by the Commission in Pebble Springs, supra. The foremost among the factors listed therein is whether the intervention would likely produce a valuable contribution to the NRC's decision-making process. Watts Bar, supra at 1422. Mr. Taylor presents no discussion on the issue of discretionary intervention and upon review of his letter-petition in its entirety, the Staff concludes that he has not demonstrated an ability to contribute to the proceeding on substantial issues so as to permit discretionary intervention.

#### IV. CONCLUSION

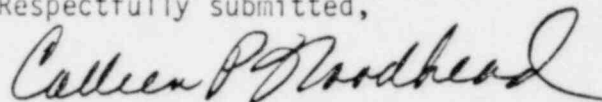
For the reasons stated above, the Staff is of the opinion that Mr. Marvin I. Lewis and the Air and Water Pollution Patrol (AWWP) have demonstrated standing to intervene and that upon a determination by the Board that one or both of these petitioners have each submitted at least one admissible contention, the requirements of 10 C.F.R. § 2.714 will have been satisfied

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<sup>9/</sup> The Staff notes that, if a hearing is held in this proceeding, Mr. Taylor may participate by way of limited appearance. 10 C.F.R. § 2.715(a). Further, the Staff notes that the Commission's Rules of Practice provides that any person who has filed a petition for leave to intervene may amend his petition without prior approval of the presiding officer at any time up to fifteen (15) days prior to the holding of the special prehearing conference pursuant to 10 C.F.R. § 2.751a. 10 C.F.R. § 2.714(a)(3). Thus, while the instant petition fails to comply with the Commission's regulations, it may be possible for the defects noted in this response to be cured by a supplemental filing of the petitioner.

and a hearing should be noticed and the petitioner(s) granted admission to the proceeding as parties. Staff believes that Mr. Charles Bruce Taylor has failed to demonstrate standing to intervene or basis for discretionary intervention and that his petition should be denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "Colleen P. Woodhead". The signature is written in dark ink and is positioned above the typed name and title.

Colleen P. Woodhead  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 17th day of September, 1981

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO PETITIONS TO INTERVENE AND REQUEST FOR HEARING OF MARVIN I. LEWIS, AIR AND WATER POLLUTION PATROL AND CHARLES BRUCE TAYLOR" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 17th day of September, 1981:

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Administrative Judge  
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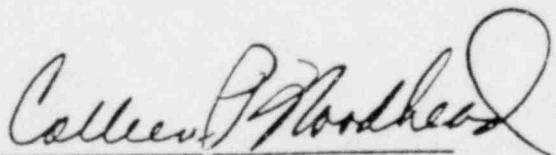
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Colleen P. Woodhead  
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