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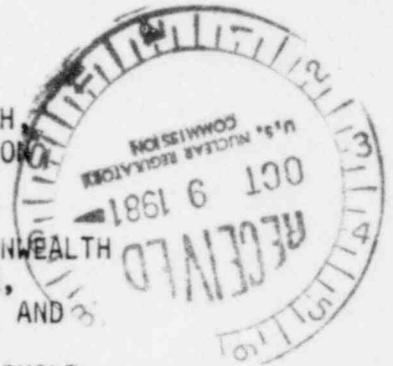
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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 LIMERICK ECOLOGY ACTION, FRIENDS OF THE EARTH, THE KEYSTONE ALLIANCE, THE CONSUMERS EDUCATION AND PROTECTIVE ASSOCIATION, JOHN SHNIPIER, JOSEPH H. WHITE, III, THE COMMONWEALTH OF PENNSYLVANIA, THE CONSUMER ADVOCATE OF THE COMMONWEALTH OF PENNSYLVANIA, SAMUEL AND CLARISSA COOPER, THE ENVIRONMENTAL COALITION ON NUCLEAR POWER, AND DEL-AWARE UNLIMITED, INC., ET AL., WILLIAM A. LOCHSTET, AND THE NATIONAL LAWYERS GUILD



I. INTRODUCTION

On August 21, 1981, the Nuclear Regulatory Commission published in the Federal Register ^{1/} 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 Limerick Ecology Action (LEA), The Keystone Alliance, Friends of the Earth in The Delaware Valley (FOE), John Shnipier, The Commonwealth of Pennsylvania, Samuel and Clarissa Cooper, joint petitioners; The Consumer Advocate of the Commonwealth

^{1/} 46 Fed. Reg. 42557.

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of Pennsylvania, Consumers Education and Protective Association (CEPA), Joseph N. White, III, The Environmental Coalition on Nuclear Power (ECNP), and Del-Aware Unlimited, Inc. as well as - Val Sigstedt and Colleen Wells, William A. Lochstet, and The National Lawyers Guild, Philadelphia Chapter.

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 [§ 2.714(a)(1)]. The petition must set out the interest of the petitioner.^{2/} [§ 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)].^{3/}

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

^{2/} Interest is a legal term of art meaning judicial standing or legal right to challenge an action.

^{3/} The conference is scheduled by the Licensing Board after petitions are filed.

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,^{4/} the Energy Reorganization Act of 1974, as amended^{5/} and the National Environmental Policy Act of 1969, as amended^{6/} (NEPA). An 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, 1421 n.4 (1977); Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3),

^{4/} 42 U.S.C. § 2011 et seq. (P.L. 83-703).

^{5/} 42 U.S.C. § 5801 et seq. (P.L. 93-438).

^{6/} 42 U.S.C. § 4332 et seq. (P.L. 91-190).

ALAB-25, 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, 9 NRC 377, 389-397 (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. Seidin, 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

Limerick Ecology Action (LEA)

By a timely filed petition served September 18, 1981, Judith A. Dorsey, Esquire, requests intervention and a hearing in this proceeding on behalf of Limerick Ecology Action (LEA). Attached to the petition are affidavits of five persons who state that they are members of LEA, that they live and work within distances of 1-11 miles of the Limerick nuclear plant site, that they believe a risk to their health, safety and property may occur to them from operation of the Limerick plant, and that they have authorized representation of their interests in this proceeding by the LEA legal counsel. One of the

affidavits is signed by Phyllis Zitzer who states that she is President of LEA and has been designated by the Executive Board of LEA to participate in this proceeding, and that she attests that the facts stated in the petition are true and correct.

The petition describes LEA as an unincorporated organization founded in 1970 in response to the planned construction of the Limerick nuclear plant and that the purpose of LEA is to educate the public about the dangers and costs of nuclear power facilities and about alternatives to nuclear power. In addition, LEA is described as interested in protection of natural resources in the Delaware Valley and is composed of over 400 individuals and families, the majority of whom live within 30 miles of the Limerick facility.

The petition alleges that operation of the Limerick facility will adversely affect LEA members by routine and accidental releases of radio-nuclides. Further, it is alleged that some of the members' property values could be affected by possible accidents at the site which would also affect LEA members who work in hospitals, schools and nursing homes and who would be affected by an emergency at the plant. The petition also states that two-thirds of the LEA membership are ratepayers of Philadelphia Electric Co. (PECo) and will be affected by costs of construction and maintenance of the Limerick plants.

Eleven specific aspects of the proceeding for which LEA wishes to intervene are listed, some of which are emergency planning, "technical

safety issues", availability of water supply, need for power, radiation protection, and security.^{2/}

The Staff believes that LEA has met the standing requirements of § 2.714 by affidavits of members who live and work near the Limerick site who allege potential injury-in-fact by release of normal and possible accidental releases of radionuclides and by describing its specific areas of interest in the proceeding. Further, the Staff is of the opinion that the LEA members have shown authorization for LEA by their designated counsel to represent their personal interests in this proceeding. Thus, Staff would support admission of LEA as a party to this proceeding upon its submission of at least one admissible contention by supplement to the petition to intervene, at least fifteen days prior to the special prehearing conference.

Friends of the Earth in the Delaware Valley (FOE)

By timely petition dated September 18, 1981 Robert L. Anthony requests that a hearing be held and leave to intervene in this proceeding on his behalf and that of an organization named Friends of the Earth in the Delaware Valley (FOE). Mr. Anthony states that he resides within twenty-five miles of the Limerick nuclear power plant site; is a user of Philadelphia Electric Co.

^{2/} Both the petition and a cover letter state that petitioner wishes a copy of the FSAR, and in addition, a "copy of the operating license and supporting documents." The FSAR submitted by Philadelphia Electric Co. to the Commission is a multivolume description of the many technical and structural characteristics of the Limerick plant required by the Commission's regulations. It is not supplied to petitioners but is available in the Pottstown, Pa. Local Public Document Room (LPDR). Staff is enclosing a letter describing the LPDR contents for petitioners. The operating license will not be issued until after issuance of the Staff Safety Evaluation Report and Final Environmental Statement and Licensing Board decision if a hearing is held.

(PE) service and that other members of FOE live "within the area affected by the Limerick nuclear reactors".

FOE is described as a "national environmental and conservation public-interest organization dedicated to the protection of U.S. Citizens' lives, health, and well-being as derived from the interdependence of life ecosystems and the appropriate use of natural resources," and that FOE in the Delaware Valley is a local branch dedicated to the same goals for the Delaware Valley region.

Mr. Anthony states that he owns property 25 miles from the Limerick plant site; that he works in Chester County "which could be drastically changed by operation of the Limerick nuclear plants"; that he is a psycho-therapist and that funds from community campaigns could be cut because of increases in electric rates and the moving of families from the county; and that the number of young people in "residential treatment from out of state" could be sharply cut by fear on the part of agencies and parents to place young patients within fifteen miles of the plants.

Mr. Anthony further states that FOE is in a unique position because of national connections and local expertise to call upon legal, technical and other professional experts, and that the environment, health and security of residents depend on consideration of "treatment hazards" that FOE members and experts have researched in TMI reports and the Limerick plant plans.

The petitioner has submitted along with the petition, 13 contentions dealing with the United States Constitution, the National Environmental Policy Act, protection of natural historic sites, "generic factors", low level radiation, siting of plants, risk assessment, and others. The petition concludes that "hazards" are involved with operation of the Limerick

plant which threaten the health, well-being, security and survival of his family and the members of FOE. Affidavits of members of FOE have been supplied disclosing that members of FOE have stated residences in proximity to Limerick (4 to 25 miles). Attached to the petition is an affidavit signed by Kathleen O'Leary who states that she is the Chairperson of the FOE in the Delaware Valley; that the Board of Directors has authorized her to express the opposition of FOE to the issuance of an operating license for Limerick Generating Station; that she lives within 30 miles of the Limerick station; that the members of FOE live in 4 Pennsylvania counties and that the plant's operation will adversely affect the health, well-being and economy of the members; and that Robert L. Anthony has been authorized by the FOE Board of Directors to represent the organization and that her personal interests may be also represented by Mr. Anthony.

The Staff is of the opinion that FOE has demonstrated standing to intervene by the personal interest of two members of the organization and that FOE members have authorized intervention in this proceeding. The Staff believes also that the requirement to describe specific aspects of the proceeding for which FOE wishes to intervene has also been set out in the list of contentions submitted with the petition.^{8/} Thus, Staff believes that if at least one of FOE's contentions is admitted to this proceeding for litigation, that FOE should be admitted as a party.

^{8/} Since supplements to petitions may be submitted until 15 days prior to the prehearing conference, the Staff will postpone response to the contentions.

The Keystone Alliance

By timely petition served September 18, 1981, Alan J. Noguee on behalf of an organization named The Keystone Alliance, requested leave to intervene in this proceeding. The petition states that The Keystone Alliance is an unincorporated association of residents of the five county Greater Philadelphia area who live within 10-50 miles of the Limerick station. The membership is described as ratepayers and persons interested in protection from potential hazards of nuclear plant and fuel cycle operations and economical, efficient energy resources, with special interest in protection of Delaware Valley residents from all nuclear hazards. This organization is concerned that the Limerick Generating Station will have deleterious public health, safety, environmental and economic effects on its members and residents of the Delaware Valley. The "areas of intervention" described in the petition include plant safety, emergency planning, adequacy of emergency planning zones, siting, population density, risk assessment, security and radiation monitoring and protection. Attached to the petition is an affidavit by Alan J. Noguee which states that he is the authorized representative of The Keystone Alliance and that the facts stated in the petition are true and correct.

The Staff believes that The Keystone Alliance has demonstrated standing as an organization to intervene on the basis of its stated purpose of protecting its members in the Delaware Valley from deleterious public health, safety, and environmental impacts which it maintains will result from operation of the Limerick plant. Since this stated purpose relates directly to the zone of interests protected by the statutes governing this proceeding and there appears to be a link between membership in the Alliance and interest of members

which might be affected by operation of the facility, affidavits of individual members stating their interest in the proceeding and authorizing the Alliance to represent them are not necessary.^{9/} Additionally, the Alliance has specified its particular areas of interest in the proceeding. Therefore, in the event that at least one admissible contention is submitted by the Alliance, the Staff would support the admission of The Keystone Alliance as a party.

Consumers Education and Protective Association (CEPA)

By timely petition filed September 21, 1981 the Consumers Education and Protective Association (CEPA) requested a hearing and leave to intervene in this proceeding. Attached to the petition, which is signed by counsel for CEPA, is an affidavit signed by Lee Frissell, Executive Director for CEPA, who states that the petition is true and correct.

CEPA is described as an organization founded to educate the public and its members about consumers rights; that it has a special interest in protection of members' rights regarding Philadelphia Electric Company; that it has over 900 members, the majority of whom live within thirty miles of the facility and that operation of the Limerick reactors will affect CEPA members adversely by routine and possible accidental releases of radionuclides. CEPA members are also described as owners of property which could be affected by accidental releases of radionuclides and that several CEPA members work in hospitals, schools and nursing homes which would bear responsibility for emergency responses in case of accident. The petition further states that CEPA members will be adversely affected if denied the right to partici-

^{9/} Allens Creek, ALAB-535, supra, 9 NRC at 392.

pate as a party in this proceeding to assure that "no operating permit is issued unless and until there is reasonable certainty that operation will not be inimical to the common defense and security or to the health and safety of the public."^{10/}

The petition lists eleven (11) specific areas of the subject matter of the proceeding which it seeks to litigate. (The list is identical to that of LEA).

CEPA's standing derives from the residency of the "vast majority" of its members within thirty miles of the Limerick facility and the potential harm to those members from operation of the facility. Unlike the Alliance, CEPA's stated purpose is not directly related to matters within the zone of interest protected by the Commission and the interest of its members in the proceeding and their authorization of CEPA to act on their behalf cannot be presumed. The petition must, therefore, be accompanied by affidavits of members setting forth how the results of the proceeding might affect their interests and authorizing CEPA to act on their behalf. CEPA will have the opportunity to amend its petition under § 2.714(a)(3) to provide the requisite affidavit(s). At present, CEPA has failed to demonstrate its standing to intervene in this proceeding.

John Shniper

By timely petition in the form of a letter dated September 21, 1981, Mr. John Shniper filed a request to intervene in this proceeding.

^{10/} Petitioner cites the findings that the Commission is required to make prior to issuance of the operating license for Limerick.

Mr. Schniper states that he is a resident of the area potentially affected by any nuclear incident at the Limerick plant, since he resides within ten miles of the plant, and also works four miles from the plant. He states that his specific interest in the proceeding concerns Philadelphia Electric Company's financial qualifications as well as its competence and ability to construct and operate the Limerick plant.

The Staff believes Mr. Schniper has failed to establish standing to intervene by failing to describe any potential personal injury which could result from the operation of the Limerick facility. His statement that he resides in an area potentially affected by any nuclear incident does not specify the particular way in which the area might be affected nor whether he is alleging that he will be personally affected. However, Mr. Schniper has described the specific areas of the proceeding for which he wishes to seek intervention.

Since amendments to petitions are permitted according to the Commission's rules of practice any time up to fifteen days prior to the prehearing conference, and since Mr. Schniper will be required to submit by supplement any contentions he wishes to litigate before he can be admitted as a party, it may be that Mr. Schniper will wish to correct the defect in his petition. But unless the petition is supplemented in this way, the Staff opposes his admission as a party for failure to demonstrate standing.

As to discretionary intervention, Mr. Schniper has made no claim to any particular ability to contribute to the proceeding, so that no basis for intervention as a matter of Board discretion could be found and should not be granted.

Joseph H. White, III

By timely petition dated September 21, 1981, Joseph H. White, III requested leave to intervene in this proceeding. He states that he lives within the "ingestion pathway EPZ" and purchases much of his food from a market which is located very near to Limerick. He expresses concern that "[l]ocal foods will not be safe to purchase", presumably as a result of potential accidents at Limerick. He further states that his occupation as a mover requires his presence in the "ingestion pathway EPZ" and the "plume exposure pathway" and that his job is threatened by operation of the Limerick plant because people may refuse to buy homes so that he could not move them. Additionally he states that he will be financially affected as a ratepayer. He also states that his health and safety will be affected by any order allowing the Limerick plant to operate and, in addition to financial security, his ability to live and purchase as he chooses will be curtailed and that he will be "placed in a situation of great stress". He states that as a resident he believes his participation in the proceedings will aid in the development of an adequate and complete record. Attached to the petition is a list of nine contentions.

The Staff believes that Mr. White has demonstrated standing to intervene since he has alleged personal injury which may result from operation of the facility, principally arising from his consumption of food which may become contaminated in the event of an accident at Limerick. Further, his list of contentions sets out specific aspects of the proceeding as to which he wishes to intervene. The Staff has not reviewed the "contentions to date" filed by Mr. White for admissibility but if Mr. White raises at least one admissible contention in his petition or supplement filed under § 2.714(b), the Staff would support his admission as a party.

Although Mr. White states that he can contribute to the record of this proceeding, his only reason for so stating is that he is a "resident" (of the Philadelphia area). This does not show any ability to contribute to this proceeding by way of expertise or special knowledge nor does his description of his education or occupation indicate any unusual credentials for admission as a party on a discretionary basis, and the Staff believes he should not be admitted for this reason.

Commonwealth of Pennsylvania and Consumer Advocate j

On September 21, 1981 the Commonwealth of Pennsylvania, by its attorney, Robert W. Adler, petitioned to participate as an interested state in this proceeding pursuant to 10 C.F.R. § 2.715(c). The petition recites that a number of state agencies have an interest in the proceeding and asks that attorneys for the Department of Environmental Resources, the Director of the Bureau of Radiation Protection, and the Director of the Pennsylvania Emergency Management Agency be placed on the service list.

By petition of September 21, 1981, Walter H. Cohen, Consumer Advocate of the Office of Consumer Advocate of the Office of Attorney General, of the Commonwealth of Pennsylvania requests participation in this proceeding as an interested state agency pursuant to 10 C.F.R. § 2.715(c). The Consumer Advocate's petition recites his responsibility to "represent the interests of consumers before any court or agency in connection with any matter involving regulation by the Pennsylvania Public Utility Commission or corresponding regulatory agency of the United States". The Staff has no objection to the participation on an interested state basis of either the Commonwealth or the Consumer Advocate.

Samuel and Clarissa B. Cooper

By an undated letter entitled "Petition to Intervene", Samuel and Clarissa B. Cooper state that they "wish to register [their] strong opposition to the granting of a License to operate the Limerick Nuclear Reactor facility," Following this statement there is a list of nine reasons the writers oppose the plant's operation. No attempt is made to demonstrate standing to intervene by this letter so that it appears to be a limited appearance^{11/} as permitted by 10 C.F.R § 2.715 rather than a petition to intervene. Assuming that this is the intent of Samuel and Clarrisa Cooper, the Staff requests that the letter of their opposition to the Limerick operating license be incorporated into the record at such time in the future that limited appearances are allowed by the presiding officer. If, however, the Cooper letter is meant to be a petition to intervene as a party to this proceeding, the Staff submits that the Cooper's petition should be denied since none of the requirements of 10 C.F.R. § 2.714 for admission as a party have been met by this letter, and thus, no standing to intervene has been shown.

Environmental Coalition on Nuclear Power (ECNP)

By timely petition dated September 21, 1981, the Environmental Coalition on Nuclear Power (ECNP) requested leave to intervene in this proceeding, and that a hearing be held. The petition states that ECNP is a public-interest

^{11/} 10 C.F.R. § 2.715 permits a person not a party to the proceeding to make such a limited appearance by making an oral or a written statement of his position on the issues at any session of the hearing or a prehearing conference within such limits as prescribed by the presiding officer.

citizen's organization which participated in the Limerick construction permit proceeding. ECNP states that it has members who reside, work, and/or own property in the immediate vicinity of Limerick, which is described as within a 50-mile radius of the plant. Names of individual members and their addresses are listed in the petition. The petition further states that ECNP members may suffer adverse consequences to their personal health and safety in the event of a radiological accident at the Limerick plant, in addition to a possible decline in property values. Also, it is stated that ECNP believes its members may be adversely affected by routine plant emissions. The specific aspects of the proceeding for which ECNP wishes to intervene are described as unresolved safety issues pertaining to boiling water reactors, TMI Lessons Learned and environmental impacts.

The petition states that Dr. Judith Johnsrud has been authorized by ECNP to represent the interests of the members in this proceeding. ECNP requests financial assistance and establishment of a local public document room in State College, Pennsylvania, as well as copies of the Limerick FSAR and ER and all NRC Staff documents pertinent to Limerick.^{12/}

The Staff believes that ECNP has shown standing to intervene as an organization which has had longstanding involvement in issues related to the licensing of Limerick. As with the Alliance, interest of members in

^{12/} The Applicant's FSAR and ER are not supplied to petitioners or parties individually but are available for study at the Pottstown, Pa. public library. No basis is given for establishment of a second LPDR at such a distance from the plant and is, in Staff's opinion, unjustified. Also, financial assistance to petitioners or intervenors is prohibited by law. See: Comptroller General's Opinion B-200585, December 3, 1979 and Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), CLI-80-19, 11 NRC 700, 702 (1980).

the results of this proceeding and authorization for ECNP to act on their behalf may be presumed from their membership. Affidavits of individual members are, therefore, not necessary. Further, ECNP has set out the specific areas of its interest in this proceeding. Upon submission of at least one admissible contention by supplement to its petition, the Staff believes ECNP should be admitted as a party to this proceeding.

Del-Aware Unlimited, Inc., Val Sigstedt and Colleen Wells

By timely petition dated September 21, 1981, Del-Aware Unlimited, Inc., on its own behalf and on behalf of two members, Val Sigstedt, and Colleen Wells, requested leave to intervene in this proceeding. The organization is described as consisting of "more than 500 members in Bucks County and Montgomery Counties (sic) who use this environment of the area." Additionally, the individual petitioners are described as "residents of the area of that portion of the facility which will draw water from the Delaware River, its environs and its water, and that of the tributaries to it, for their enjoyment of property values, recreation, fishing, and tourist trade." The interest of the petitioners is alleged as being the depletion of the waters of the Delaware River by the "operations proposed by the applicant" which would "be contrary to their health and safety and otherwise contrary to law and the public interest." Petitioners state they otherwise take no position regarding operation of nuclear facilities in general or the location and operating issues regarding Limerick. The opposition of the petitioners to the diversion of the Delaware River is more fully explained as the adverse impacts of the Point Pleasant (Pumping Station) intake on a spawning and nursery area for American shad, and a critical habitat of

the short-nosed sturgeon as well as on recreational areas of the Delaware River. Additionally, petitioners state that the Delaware River quality will deteriorate due to depletion which will affect downstream users and the River's ecology. Beyond this, petitioners state that "intake facilities" will destroy the character and possibly the physical structure of the Pennsylvania Canal, a National Historic Landmark; the pump house will destroy the peace and tranquility of Point Pleasant Village; the proposed Bradshaw Reservoir will adversely affect ground water tables and ground water quality and discharge into the Perkiomen Creek will adversely affect its quality as well as causing flooding. It is also alleged that an indirect result of "the proposed project" would be that "a companion project proposed by the Neshaminy Water Resources Authority, which otherwise would be infeasible, will be rendered feasible ..." and thus adverse effects would be created on several listed streams or creeks in Bucks County. The petitioners state several alternatives available and note that PECO must obtain Clean Water Act § 401 discharge permits from the Environmental Protection Agency (EPA) prior to issuance of an NRC operating license and that "any action on the construction license is invalid as a result of changed circumstances, including changes in the diversion plan." In conclusion, the petitioners allege that "an operating license to operate diversion facilities at Point Pleasant, or to otherwise divert water from the Delaware River, would be a violation of the provisions of the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the Clean Water Act of 1972, as amended, the National Historic Preservation Act, the Administrative Procedure Act, and the Atomic Energy Act, and the regulations thereunder.

The NRC Staff submits that petitioners have failed to show standing to intervene in this proceeding because the potential harm which they allege arises from activities within the jurisdiction of a Federal agency other than the NRC and because they have failed to show any personal injury not shared by the public in general.

As explicitly stated by petitioners, the only potential injury claimed would result from the diversion of water from the Delaware River through the Point Pleasant pumping station, a planned method of water supply for Limerick. Allocation of water in the Delaware River Basin is outside the jurisdiction of the Nuclear Regulatory Commission. The Delaware River Basin Commission (DRBC), a regional agency created by intergovernmental compact, has been given jurisdiction as a federal agency to allocate water supplies among users in the Delaware River basin, and has the responsibility under the National Environmental Policy Act (NEPA) to assess the environmental impacts of proposals for such water allocation or diversion.^{13/} This matter was previously addressed during the construction permit proceeding for the Limerick station. Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-262, 1 NRC 163, 179, 206 (1975). The DRBC issued an Environmental Impact Statement (EIS) in 1973 which addressed the impacts of a comprehensive plan for water allocation, including the supply of water for the Limerick facility through the Point Pleasant Diversion Plan and Bradshaw Reservoir. A public hearing was held by DRBC to consider a

^{13/} The Delaware River Basin Compact was adopted by the States of Delaware, New York, New Jersey and Pennsylvania as well as the Federal Government. The U.S. Congress ratified the compact in 1961. P.L. No. 87-328, 75 Stat. 688.

revision of the Comprehensive Plan on November 18, 1980; and an environmental assessment, in accordance with NEPA and the DRBC rules of practice and procedure was prepared by DRBC.^{14/} Thus, it is clear that the petitioners have come to the wrong forum to raise their complaint and that the only matter of interest to them is beyond the scope of this proceeding. For this reason, the Staff submits that the petition must be denied for lack of standing.

William A. Lochstet

By a document dated September 18, 1981, William A. Lochstet requested a hearing and petitioned to intervene in the proceeding. In support of his petition, Dr. Lochstet states that he lives about 120 miles from the Limerick plant site, has occasion to travel near (within three miles) of the plant site, and that the operation of the Limerick plant will adversely affect his "health, mental health, security, social and political status, and genetic condition of my progeny." He further states that he consumes food on those "occasions of visitation to the area," which he further explains as creating an "uncertainty in the amounts of radioactivity contained in the foodstuffs of these areas due to the distribution of possibly contaminated foods grown in the vicinity of Limerick 1 and 2." In addition, Dr. Lochstet states that radon gas from mines in the western United States will be present at his residence in State College, Pennsylvania, and that the Limerick plant's operational or accidental releases will affect his residential area. He

^{14/} Delaware River Basin Commission report of Proceedings Concerning Philadelphia Electric Company: Bradshaw Reservoir Pumping Station and Transmission Main, Bucks and Montgomery Counties, Philadelphia, February 18, 1981, Docket No. D-79-52CP.

states also that because he is a party to the "Three Mile Island Unit 2 Technical Specifications ... proceeding" and holds "an earned Ph.D. in physics" that he is "knowledgeable in the matters to be considered." He submits one contention with his petition which alleges that the proposed operating license does not provide adequate protection to his health, safety or property.

The Staff opposes the admission of Dr. Lochstet to this proceeding for failure to show standing. The allegation that "occasional" visits to the area where he will consume foodstuffs which might possibly be contaminated with an unspecified substance is too remote and speculative to posit an injury-in-fact. Dr. Lochstet's residence 120 miles away at State College, Pennsylvania is too great a distance to come within the "nearby residency" criterion of the Commission's caselaw, cited previously. Additionally, the petitioner's allegation that radon gas from (uranium) mines in the western United States travels to his residential area is also extremely speculative and not sufficient to show a direct and immediate potential harm from this proceeding. Beyond this, Dr. Lochstet has failed to specify any aspect of the proceeding as to which he wishes to intervene, as his vague generalization of "health, safety and property" does not indicate any one aspect of the subjects under consideration. Therefore, in the Staff's view, Mr. Lochstet has in no way complied with the requirements of 10 C.F.R. § 2.714.

As to discretionary intervention, although Dr. Lochstet states that he could contribute to the proceeding because of his experience as a party in the Three Mile Island proceeding and because he holds a doctorate in physics, he has not specifically set forth any aspect of the proceeding on which he wishes to intervene which has not already been raised by other petitioners.

There are no indications that such other petitioners, some of whose admission the Staff has supported, will not be able to pursue the broad issues identified in his proposed Contention 1 equally as well as could Dr. Lochstet. Therefore, the Staff believes there is no reason to admit Dr. Lochstet as a party on a discretionary basis.

The National Lawyers Guild

By document dated September 18, 1981, The National Lawyers Guild, Philadelphia Chapter petitioned to intervene in this proceeding on its behalf and that of its individual members. In support of its petition, the Guild states that the organization consists of lawyers, legal workers and law students who reside in and around Philadelphia and that the group is concerned about the rights of individuals and organizations to be free of illegal surveillance, other dangerous security measures and the rights of prisoners to be treated humanely and accorded rights comparable to other members of society. The group is described as one which "has raised the issue of illegal surveillance on the part of Philadelphia Electric Company against opponents of the Limerick Generating Station in proceedings before the Pennsylvania Public Utility Commission", and also had a "particular concern" about the stringent security measures required to safeguard nuclear power reactors. Further, the group is stated to have a concern, growing out of its work with prisoners' rights, about the emergency planning for prisoners in the Grateford prison. The petition states that if allowed to intervene the Guild will raise contentions in the areas of security planning and emergency planning.

The Staff opposes the admission of The National Lawyers Guild for failure to show standing. The purpose of the Guild is unrelated to the health, safety, and environmental impacts of the proposed operation of the Limerick plant which are the subjects of this proceeding.^{15/} Although that does not mean that its members could not be affected in some way by the outcome of this proceeding, the Guild has not primarily sought to demonstrate interest through its members.^{16/} Rather, the Guild seeks to represent the interests of inmates with respect to emergency planning and apparently the public in general with respect to impact of nuclear plant security measures on civil liberties. This Board is not the proper forum for concerns regarding any civil liberties implications of the Applicant's security plan. While this Board would be the proper forum for concerns regarding the adequacy of emergency planning as it relates to the inmate population at Graterford, it is not clear what "rights of prisoners" the Guild is seeking to raise. It may be that by amended petition the Guild can more specifically identify the emergency planning issue it seeks to raise and can append affidavits of inmates at the Graterford Institution stating how they believe they may be affected by the results of this proceeding and authorizing the Guild to act on their behalf in this proceeding. At present, however, the Guild has not established standing and should not be admitted as a party to this proceeding.

No representation of any special ability to contribute to this proceeding on any subject of health, safety, or environmental matters has been made

^{15/} Allens Creek, ALAB-535, supra, 9 NRC at 392.

^{16/} The generalized statement of residency of members in and around Philadelphia is not sufficient to indicate how such members believe that they may be affected by the results of the proceeding.

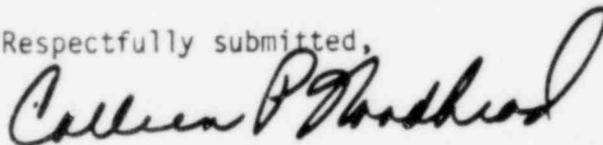
by the Guild. Therefore, no basis for allowing discretionary intervention exists and the Staff believes it should not be granted.

IV. CONCLUSION

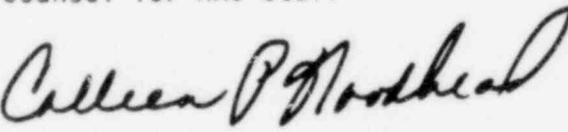
For the reasons set out above, the Staff believes that Limerick Ecology Action, Friends of the Earth in the Delaware Valley, The Keystone Alliance, The Environmental Coalition on Nuclear Power and Joseph H. White, III have demonstrated standing to intervene and have identified specific aspects of the proceeding as to which they wish to intervene, and that upon submission of at least one admissible contention that they should be admitted as parties to the proceeding. The Staff also has no objection to the participation in this proceeding of the Commonwealth of Pennsylvania and the Consumer Advocate of the Commonwealth of Pennsylvania pursuant to 10 C.F.R. § 2.715(c).

In the Staff's opinion, as explained above, John Shniper, Samuel and Clarissa Cooper (joint petitioners), The Consumers Education and Protective Association, Del-Aware Unlimited, Inc., et al., William A. Lochstet, and The National Lawyers Guild have not demonstrated standing to intervene and their petitions should be denied, subject to their right to amend their petitions to cure the defects identified by the Staff.

Respectfully submitted,



Colleen P. Woodhead
Counsel for NRC Staff

for 

Stephen H. Lewis
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 8th day of October, 1981

REFERENCE DOCUMENTS AVAILABLE IN THE
LOCAL PUBLIC DOCUMENT ROOM, PUBLIC LIBRARY,
500 HIGH ST., POTTSTOWN, PA

I. Title 10, Code of Federal Regulations (CFR), Chapter 1

This part of the Code of Federal Regulations contains all the regulations issued by the Nuclear Regulatory Commission. Of particular note are the following sections:

Part 2: Rules of Practice for adjudicatory proceedings

Part 20: Radiation Protective Standards and Limits

Part 50: Safety standards for reactor design, construction and operation

Part 51: Environmental Protection Criteria

(The public may purchase paperback copies of Title 10 CFR Chapter 1, 1980 edition, from the U.S. Government Printing Office, Washington, DC, 20402 for \$7.50 each.)

II. Nuclear Regulatory Commission Issuances (NRCI)

All written decisions of the Licensing Boards, Appeal Board, and the Commission concerning adjudicatory proceedings are recorded in the NRCIs. They are available in the LPDR on microfiche film.

The decisions concerning the Limerick Station construction permit may be found at 7 AEC 1098 and 1 NRC 163.

NUREG-0386: "US NRC Staff Practice and Procedure Digest"
(References decisions of the adjudicatory bodies of the Commission contained in the NRCIs)

III. Commission Documents Concerning Safety Issues

The library contains many analytical and explanatory documents issued by the Commission. The following may be of particular interest:

NUREG-0396: "Planning Basis for the Development of State and Local Governmental Radiological Emergency Response Plans"

NUREG-0654: "Criteria for Preparation and Evaluation of Radiological Emergency"

NUREG-0737: "Clarification of TMI Action Plan Requirements"

IV. Final Safety Analysis Report (FSAR) and Environmental Report (ER) concerning the design and operation of the Limerick Station submitted to the Commission by Philadelphia Electric Co. with the application for operating license

V. US AEC Final Environmental Statement (FES) and Safety Evaluation Report (SER) concerning the Limerick Station construction permit issued in 1974.

(After completing review of the FSAR and ER the NRC will issue a Safety Evaluation Report and Final Environmental Statement concerning the operation of the Limerick Station. These documents will also be placed in the LPDR.

VI. Correspondence Between NRC and PECO

VII. Inspection Reports on the Limerick Station by the NRC Office of Inspection and Enforcement

Various other documents, studies, reports pertinent to the Limerick Station are available and listed on the library's accession list.

In addition, the public may request copies of documents from the Commission's Public Document Room by letter, telephone or in-person. Written requests should be addressed to -

U.S. Nuclear Regulatory Commission
Public Document Room
Washington, D.C. 20555

Complete data regarding the item requested should be provided with requests. Copies are provided at a copying charge per page according to the material requested.

Up to three items may be requested by telephone at (202) 634-3273

UNITED STATES
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
PHILADELPHIA ELECTRIC COMPANY) Docket Nos. 50-352
(Limerick Generating Station,) 50-353
Units 1 and 2)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO PETITIONS TO INTERVENE AND REQUEST FOR HEARING OF LIMERICK ECOLOGY ACTION, FRIENDS OF THE EARTH, THE KEYSTONE ALLIANCE, THE CONSUMERS EDUCATION AND PROTECTIVE ASSOCIATION, JOHN SHNIPER, JOSEPH H. WHITE, III, THE COMMONWEALTH OF PENNSYLVANIA, SAMUEL AND CLARISSA COOPER, THE CONSUMER ADVOCATE OF THE COMMONWEALTH OF PENNSYLVANIA, THE ENVIRONMENTAL COALITION ON NUCLEAR POWER, AND DEL-AWARE UNLIMITED, INC., ET AL., WILLIAM A. LUCHSTET; AND THE NATIONAL LAWYERS GUILD" 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 8th day of October, 1981:

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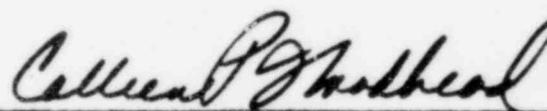
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