UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Gulf States Utilities Company, et al.	)	Docket Nos. 50-458 50-459
	)	
(River Bend Station, Units 1 and 2)	)	
	)	

APPLICANTS' ANSWER TO PETITIONS OF LOUISIANIANS FOR SAFE ENERGY, GRETCHEN ROTHSCHILD, AND LOUISIANA CONSUMERS' LEAGUE FOR LEAVE TO INTERVENE

Preliminary Statement

On September 4, 1981, the Nuclear Regulatory Commission ("Commission" or "NRC") published a notice in the Federal Register entitled "Gulf States Utilities Co. and Cajun Electric Power Cooperative (River Bend Station, Units 1 and 2); Receipt of Application for Facility Operating Licenses; Consideration of Issuance of Facility Operating Licenses; Availability of Applicants' Environmental Report; Opportunity for Hearing" ("Notice").[1/] In response to the Notice, petitions for intervention were filed on behalf of Louisiana Consumers' League, Inc. ("LCL"), dated September 30, 1981, and on behalf of Louisianians for Safe Energy, Inc. ("LSE") and Gretchen Reinike Rothschild, dated October 2, 1981.

1/ 46 Fed. Reg. 44539 (September 4, 1981).

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For the reasons discussed more fully below, petitioners LCL and LSE have failed to satisfy the requirements for organizational standing in an NRC proceeding. Petitioner Rothschild has not shown the requisite personal interest for intervention in this proceeding. Nor have petitioners identified the "specific aspect or aspects of the subject matter of the proceeding" intended to be pursued. Accordingly, the petitions 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.

The decisions of the Commission and its adjudicatory boards do not provide clear guidance as to what constitutes the requisite "personal interest" required for intervention, more specifically, whether mere proximity to the nuclear facility, absent any other nexus or showing, is sufficient. In general terms, the decisions of the Commissioners have adopted the test for standing utilized by the United States Supreme Court in requiring a demonstration of "injury in fact" as a basis for establishing the requisite personal

interest. Thus, the Commissioners have indicated that an assertion of "injury in fact" to the petitioner himself, and not a generalized grievance shared by a large class of public, is necessary for standing. In Transnuclear, Inc., CLI-77-24, 6 NRC 525 (1977), the Commissioners held as follows in deciding that petitioners lacked standing to request a hearing:

> Any right the Petitioner may have to demand a hearing in the present proceeding must be based upon Section 189 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2239. That section provides that a hearing must be granted, on the request of persons who can demonstrate an "interest [which] may be affected by the proceeding." Under the most recent Supreme Court decision on standing, a party seeking relief must "allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction." Linda R.S. v. Richard D., 410 U.S. 614, 617 (1973), Warth v. Seldin, 422 U.S. 490, 499 (1975); see Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26 (1976). One focus of the "injury in fact" test is the concept that a claim will not normally be entertained if the "asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens . . . ." Warth v. Seldin, 422 U.S. at 499. Thus, even if there is a generalized asserted harm, the Petitioners must still show a distinct and palpable harm to them. Id. at 501.

See United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669 (1973). 2/

The Commission recently reviewed and reaffirmed these requirements for standing in rejecting intervention petitions in Westinghouse Electrical Corp. (Export to South Korea), CLI-80-30, 12 NRC 253 (1980). The Commissioners again emphasized the importance of stating some "injury in fact" to the petitioner himself as a basis for establishing the requisite personal interest in the proceeding for intervention:

> In developing the "injury in fact" requirement, the Court has held that an organization's mere interest in a problem, "no matter how long-standing the interest and no matter how qualified the organization is in evaluating the problem," is not sufficient for standing to obtain judicial review. Sierra Club v. Morton, 405 US 727, 739 (1972). The organization seeking relief must allege that it will suffer some threatened or actual injury resulting from the agency action. Linda R.S. v. Richard D., 410 US 614, 617 (1973); Warth v. Seldin, 422 US 490, 499 (1975). Simon v. Eastern Kentucky Welfare Rights Organization, 426 US 26, 40 (1976), made clear that "an organizati n's abstract concern with a subject chat could be affected by an adjudication

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2/ 6 NRC at 530-31 (emphasis added). While the cited proceeding was for consideration of export license applications, the Commission did not distinguish the standing requirements from those applied to all proceedings, including reactor applications.

> does not substitute for the concrete injury required by article III." 3/

In certain cases, it is easy to discern that the Appeal Board has followed the approach adopted by the Commissioners in construing Section 2.714 to limit intervention to those who have particularized specific injury and do not merely seek to vindicate the general public interest. In the Sheffield proceeding, the Appeal Board stated these requirements for standing as follows:

> Both the Atomic Energy Act and the Commission's Rules of Practice confer a right to intervene in a licensing proceeding upon those who possess an "interest [which] may be affected by the proceeding." It is now settled that, in determing whether such an interest has been satisfactorily alleged, contemporaneous judicial concepts of standing are to be applied. More specifically, it must appear from the petition both (1) that the petitioner will or might be injured in fact by one or more of the possible outcomes of the proceeding; and (2) that the asserted interest of the petitioner in achieving a particular result is at least arguably within the "zone of interests" protected or regulated by the statute or statutes which are being enforced. Portland General Electric Company

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3/ 12 NRC at 258. Of course, the "injury in fact" requirements for an organization or individual petitioner are identical, since the organization stands in shoes of the members it purports to represent. Certainly there is nothing in the regulations to suggest that different rules exist for organizations than for individuals. Therefore, absent a statement by a petitioner as to how he has a "direct stake in the outcome" of the proceeding, his generalized allegations establish only a "mere 'interest in the problem.'" Sierra Club v. Morton, 405 U.S. 727, 739 (1972).

> (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976).
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> . . . . . .
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> As is readily apparent from the foregoing, neither petitioner has identified, let alone particularized, any specific injury that it or its members would or might sustain should the Sheffield license renewal and amendment application be denied or, alternatively, granted subject to the imposition of burdensome conditions upon the license. Rather, both petitioners seek intervention in order to vindicate broad public interests said to be of particular concern to them and their members or "contributors" ([petitioner] does not claim to have members as such).
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> . . . [T]he test is whether a cognizable interest of the petitioner might be adversely affected if the proceeding has one outcome rather than another. And, to repeat, no such interest is to be presumed. There must be a concrete demonstration that harm to the petitioner (or those it represents) will or could flow from a result unfavorable to it - whatever that result might be. 4/

In contrast to its pronouncements in the Sheffield proceeding, other statements by the Appeal Board indicate

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4/ Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 739, 741, 743 (1978)(emphasis added)(footnotes omitted). While this decision arose under the old version of Section 2.714, the standing requirements under the old and new rules are the same. See also Allied General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420 (1976).

that a lesser showing may be made for intervention by a person who resides near a nuclear facility. In Virginia Electric Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54 (1979), the Appeal Board stated that "close proximity has always been deemed to be enough, standing alone, to establish the requisite interest."[5/]

However, in Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377 (1979), the Appeal Board stated that valid petitions have "explicitly identified the nature of the invasion of [petitioner's] personal interest which might flow from the proposed licensing action."[6/] The Appeal Board clarified its earlier North Anna decision to mean that "persons who live in close proximity to a reactor site are presumed to have a cognizable interest in licensing proceedings involving that reactor."[7/] And in Houston Lighting and Power Company (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644 (1979), the Appeal Board construed North Anna to require allegations of residence proximate to the facility "coupled with [petitioner's] expressed concern about injury to his person and property should the plant malfunction . . . ."[8/]

5/ 9 NRC at 56.

6/ 9 NRC at 393 (emphasis added).

7/ Id. (emphasis added).

8/ 9 NRC at 646 n.8 (emphasis added).

In the Palisades proceeding, the Licensing Board similarly construed these decisions to mean that "close proximity" to the facility merely raises a presumption of standing and that further demonstration of a "cognizable interest personal" to the intervenor is necessary for standing. The Board said:

> Conceding that those who live within close proximity to a nuclear facility are presumed to have a cognizable interest, the Staff asserts that it is important to recognize that the "close proximity" test only raises a presumption of standing. What is really "presumed" by the "close proximity" test is that the potential litigant will in fact be able to show an injury to an interest protected by the Atomic Energy Act. If he or she cannot, then the presumption fails.
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> The Staff position is amply supported by at least two cases [citing and discussing Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393 (1979); Dairyland Power Cooperative (LaCrosse Boiling Water Reactor), LBP-80-26, 12 NRC 367, 373 (1980)] . . . .
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> Thus, the Union cannot assert standing in this case by virtue of the "close proximity" test unless it can also show that it has an interest protected by the Atomic Energy Act (a "cognizable interest") that has been adversely affected by the Director's Order in a way that is environmentally or safety-related. 9/

9/ Consumers Power Company (Palisades Nuclear Power Facility), Docket No. 50-255 SP "Memorandum and Order Ruling on Petition to Intervene," (July 31, 1981)(slip opinion at 11-12)(emphasis added).

Accordingly, there is a lack of clarity in the decisions of the Appeal Board as to the cognizable interest which must be demonstrated to establish standing to intervene in a reactor licensing proceeding. Nonetheless, it is submitted that the decisions of the Commission have definitively required a personalized showing of actual or putative harm to the petitioner himself and, therefore, such a showing cannot be made simply on the basis that a petitioner resides within a designated distance from the facility. 10/

Thus, with respect to Petitioner Rothschild, who merely alleges that she is "a property owner in the vicinity of the proposed facilities in West Feliciana Parish" 11/ without further specification of any personal interest, Applicants submit that she has failed to "show injury that has occurred or will probably result from the action involved" and therefore lacks standing to intervene. Mrs. Rothschild does not, as required by the Commission's regulations, set forth with particularity her interest in the proceeding, how that interest may be affected by the outcome, or any facts which would establish the nature of her rights under the Act to be made a party. Notwithstanding allegations of proximity to the plant, petitioner has therefore failed to show any

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10/ In any event, Applicants wish to preserve the point for the purpose of possible judicial review.

11/ LSE Petition at 2.

"cognizable interest" under Section 189 of the Atomic Energy Act sufficient to demonstrate her standing.[12] Certainly, petitioner's status as a ratepayer is insufficient for standing.

With regard to LCL and LSE, it is now well settled that "organizations . . . are not clothed with independent standing to intervene in NRC licensing proceedings. Rather, any standing which [an organization] may possess is wholly derivative in character." Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390 (1979).[13] In other words, an organizational petitioner must establish that at least one of its members has a legal standing to intervene in this proceeding under the rules applicable to individual petitioners.

The LCL petition states that the organization's purpose is "[t]o promote the interests and rights of all consumers in the State of Louisiana"[14] and "[t]o represent the interests of Louisiana consumers before legislative and administrative bodies."[15] The LCL petition then states that a "number of petitioner's members live within 15 and 30 miles of the proposed facility" and that a "number of petitioner's

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12/ Certainly, petitioner's status as a ratepayer is insufficient. See note 27, infra.

13/ See also Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728 (1979); Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73 (1979).

14/ LCL Petition at 1.

15/ Id.

members obtain their drinking water from the regional aquifer over which the proposed facility is to be located."[16/]

Similarly, the LSE petition recites that the organization's "objectives and purposes . . . include the education of the citizens of Louisiana regarding the various energy options available to meet the energy needs of the State and its citizens."[17/] Like the LCL petition, the LSE petition states that "[m]ost of the members of petitioner LSE live within 15 and 30 miles of the proposed facilities and obtain their drinking water from the aquifer over which the proposed facilities, River Bend Units 1 & 2, will be located."[18/]

However, neither petition is supported by the statement of any member of the respective organizations setting forth facts sufficient to demonstrate a member's personal interest in the proceeding. In the section of its petition entitled "Interests of the Petitioner," the LCL petition simply states in the most general terms that "[t]he interests of petitioner and the Louisiana residents it represents which may be affected by the results of this proceeding are the potential financial, health, safety and environmental problems associated with this nuclear power station."[19/] The LSE petitions is equally deficient.[20/]

16/ Id. at 1-2.

17/ LSE Petition at 1.

18/ Id. at 2.

19/ LCL Petition at 2.

20/ LSE Petition at 2-3. The petition includes only the affidavit of an officer of LSE who states that "the information

(Footnote 20/ continued on next page)

The failure of LCL and LSE to delineate specifically the interests of their members is therefore fatal to the petition. In the Allens Creek decision in ALAB-535, the Appeal Board emphasized that the Licensing Board "was not merely entitled but obligated to satisfy itself that there was at least one member of the [petitioner organization] with a particularized interest which might be affected by the outcome of the proceeding" and, further, that the Board was not required "to presume that the [petitioner] had a member with the requisite affected interest on the strength of nothing more than the naked representation in its petition that a certain number of [petitioner's] members reside within 'close proximity' to the site of the proposed facility."[21/] The Appeal Board explained its rationale as follows:

> Although it may be reasonable to suppose that most (perhaps all) [petitioner's] members share that dedication as well as subscribe to the general objectives of the organization as spelled out in the petition, it scarcely follows perforce that each considers that construction of the Allens Creek facility would invade some personal interest "arguably

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20/ (continued)

contained in these documents is true and correct to the best of his information and belief." This does not constitute compliance with the Commission's requirements for organizational standing that specific members with affected, personal interests be identified and that those members expressly authorize the organization to represent their stated interests.

21/ ALAB-534, 9 NRC at 391-92.

within the zone of interests sought to be protected or regulated" by either the statutes this Commission enforces or the Constitution. Insofar as we are aware, joining and retaining membership in [petitioner] does not signify adherence to any particular views regarding the desirability of nuclear power facilities, either from a civil liberties standpoint or otherwise. Nor, more importantly, does there appear to be any necessary link between holding [petitioner] membership and possessing an interest which might be affected by the construction or operation of such a facility. Indeed, for all that appears on this record, the personal intersts of any particular [petitioner] member might be advanced, rather than harmed, by the construction of Allens Creek - i.e., the proposed licensing action would cause the member no injury in fact at all.

. . . . . .

Absent disclosure of the name and address of one such member, it is not possible to verify the assertion that such members exist. In a footnote in their brief, the amici curiae endeavor attempts to brush this consideration aside by noting that the veracity of [petitioner's] allegation that it has nearby members that has never been challenged and, were it to be, the Board below could require a [petitioner] officer to submit an affidavit attesting to the truthfulness of the allegation. What this line of reasoning ignores is that both the Board and the other parties were entitled to be provided with sufficient information to enable them to determine for themselves, by independent inquiry if thought warranted, whether a basis existed for a formal challenge to the truthfulness of the assertions in [petitioner's] petition. Beyond that, we are unprepared to accept amici's implicit thesis that standing may be established by means of an affidavit which

> makes conclusory assertions not susceptible of verification by either other litigants or the adjudicatory tribunal. We know of no authority for such a novel and unattractive proposition, which to us runs counter to fundamental concepts of procedural due process. 22/

Because petitioner in Allens Creek did not satisfy this requirement, its petition to intervene was denied.

The same approach has been taken in a number of other licensing cases. For example, in the Enrico Fermi proceeding, the Board stated that an organization which seeks to intervene on the basis of the interest of its members "must identify specifically the name and address of at least one affected member who wishes to be represented by the organization." 23/ More recently, the Licensing Board in the Perry proceeding also stated the requirement that petitions for intervention "be accompanied by one or more affidavits stating the place of residence of members on whom standing is based and stating that the organization is authorized to represent the member's interests." 24/

22/ Id. at 392-93 (footnote and citations omitted)(emphasis in original). As with petitioner in Allens Creek, "[i]nsofar as we are aware, joining and retaining membership in [LSE or LCL] does not signify adherence to any particular views regarding the desirability of nuclear power facilities . . . ." Id. at 392.

23/ Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979).

24/ Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), Docket Nos. 50-440 and 50-441, "Memorandum and Order Scheduling Prehearing Conference Regarding Petitions for Intervention" (April 9, 1981)(slip opinion at 6).

In the Big Rock Point proceeding, the Licensing Board held that intervention must be denied because the organization had failed to identify specific members by name and address, provide a statement by such members authorizing the organization to represent it, and provide a statement of the member's interests which would be affected by the proposed action.[25/] And in Comanche Peak, the Licensing Board reiterated that while an organization can establish standing through its members whose interests may be affected, "the specific members must be identified, how their interest may be affected must be shown, and the member's authorization to the organizaton must be stated . . . ."[26/] Accordingly, the unsupported and conclusionary representation in the LSE and LCL petitions that their respective memberships possess certain personal interests is insufficient as a matter of law for intervention.

Further, some of the interests alleged are not in any event a basis for intervention. LSE posits its standing in part upon the status of its members as ratepayers. However, such concerns are clearly outside the "zone of interests" under the operating statutes of the NRC and are

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25/ Consumers Power Company (Big Rock Point Nuclear Plant), Docket No. 50-155, "Memorandum and Order" (September 25, 1979)(slip opinion at 4).

26/ Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), LBP-79-18, 9 NRC 728, 729 (1979).

legally inadequate for intervention.[27] In this regard, the purported representation of the general "public interest" or "consumer interests" by both LSE and LCL should be directed to the Public Utility Commission of Texas.

To the extent that LSE relies upon a possible "lowering of property values due to the existence and operation of the proposed facilities,"[28] its assertion is too remote and speculative for standing[29] and is, in any event, outside the zone of interests cognizable under the operating statutes of the NRC.[30] The same point applies with equal force to

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27/ 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).

28/ LSE Petition at 3.

29/ See Simon v. Eastern 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 (1973). In any event, this economic interest is premised upon a widespread economic downturn within the entire area and, as such, is indistinguishable from those interests shared in substantially equal measure by all or a large class of the public. Petitioner has therefore failed to "show a distinct and palpable harm" to itself or its members. Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977).

30/ 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).

Petitioner Rothschild, who alleges that she owns property in the vicinity of the site.

Petitioners LSE and Rothschild express a "concern" that they "could be adversely affected by radioactive emissions from the proposed facilities" and allude to "significant safety deficiencies due to numerous Unresolved Safety Issues." They also state an unspecified "interest" in the "indefinite storage of radioactive wastes on the site of the proposed facilities, and the future transportation and disposal of these wastes."[31/] Petitioner LSE similarly expresses concern over waste storage and the safe operation of the plant. These recitations, however, lack the particularity required by 10 C.F.R. §2.714 and express concerns which are simply too diffuse and generalized to qualify petitioners for standing under the requirements of the Commission's regulations. Such allegations fail to "show a distinct and palpable harm"[32/] to petitioners or how petitioners themselves "will or might be injured in fact by one or more of the possible outcomes of the proceeding."[33/] Rather, such statements express only a "generalized grievance"[34/] based on interests shared by all

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31/ LSE Petition at 3.

32/ Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977).

33/ Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 740 (1978).

34/ Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977), citing Warth v. Seldin, 422 U.S. 490, 499 (1975).

other members of the general public. In these circumstances, petitioners have not "identified, let alone particularized, any specific injury that [they] . . . would or might sustain," but merely seeks intervention "in order to vindicate broad public interests said to be of particular concern" to them.[35/]

Finally, petitioners have failed to comply with the requirement under the rules for intervention that they designate "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene."[36/] The aspects designated by petitioners merely outline general areas of subject matters in more or less "table of contents" fashion. These designated "aspects" are entirely too vague to constitute compliance with the standard of specificity contained in 10 C.F.R. §2.714(a)(2). For example, the LCL petition's reference to the "safe operation of this nuclear power station"[37/] as one aspect of the proceeding it would pursue is entirely lacking in specificity. As the Licensing Board stated in the Midland proceeding, the requirements for properly designating such "aspects" are unclear

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35/ Nuclear Engineering Company, Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 741 (1978).

36/ 10 C.F.R. §2.714(a)(2)(emphasis added).

37/ LCL Petition at 2.

but likely "narrower than a general reference to [the Commission's] operating statutes."[38] The reference in the LSE petition to unspecified hydraulic events involving the Mississippi River[39] is likewise altogether too vague.

To the extent that the petitions would attempt to raise matters outside of an Atomic Safety and Licensing Board's jurisdiction at an operating license proceeding, they cannot fulfill the "aspect" requirement of 10 C.F.R. §2.714.[40] For example, both petitions would raise the ultimate disposal of waste as an aspect to be considered. This is clearly prohibited.[41] Another example is LCL's desire

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38/ Consumers Power Company (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1975).

39/ LSE Petition at 5.

40/ 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).

41/ The ultimate disposition of reactor waste is currently the subject of NRC rulemaking. See 44 Fed. Reg. 61372 (October 25, 1979). As a generic issue to be determined by the Commission, it is not for consideration by individual licensing boards. The Commission's notice of rulemaking followed a decision by the Court of Appeals in the State of Minnesota v. United States Nuclear Regulatory Commission, 602 F.2d 412 (D.C. Cir. 1979), which sustained dismissal of a contention regarding ultimate waste disposal in Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41 (1978). In reciting these events, the Licensing Board in the Allens Creek proceeding stated that it was "bound by the Commission's decision" in dismissing a similar contention. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), Docket No. 50-466, "Order" (March 10, 1980)(slip opinion at 37-38). See also Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), Docket Nos. 50-338 SP and 50-339 SP, "Order Denying Intervenors' Motion to Amend Petition to Intervene" (August 17, 1979).

to consider the "adequacy of evacuation plans for low-income and moderate income persons . . . within a 50-mile radius of this nuclear power station."[42] Commission emergency planning regulations limit evacuation planning to the plume exposure Emergency Planning Zone, i.e., 10 miles,[43] and, therefore, petitioner's attempt to consider evacuation of an area within a 50-mile radius of a nuclear power station would be a prohibited challenge to the Commission's regulations.[44] See Metropolitan Edison Company (Three Mile Island Nuclear Station, Unit No. 2), ALAB-456, 7 NRC 63, 67 n.3 (1978); Potomac Electric Power Company (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 89 (1974).

42/ LCL Petition at 2.

43/ See 10 C.F.R. §50.47(c)(2).

44/ Further, LCL lacks standing to argue the rights of "low-income and moderate income persons" not within its organization. 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 claim to relief 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." See also Arlington Heights v. Metropolitan Housing 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).

Conclusion

For the reasons discussed more fully above, petitioners have failed to satisfy the requirements for intervention by an organization purporting to represent the personal interests of its members. Furthermore, Petitioner Rothschild has failed to establish a personal interest in the outcome of the proceeding sufficient for standing to intervene. Finally, petitioners have failed to designate those aspects of the subject matter in which they have such an interest. Accordingly, the petitions to intervene should be denied. Applicant has no objection, however, to a limited appearance by any of the petitioners pursuant to 10 C.F.R. §2.715(a).

Respectfully submitted,

CONNER & WETTERHAHN

Troy B. Conner, Jr.

Troy B. Conner, Jr.
Mark J. Wetterhahn

Suite 1050
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
202/833-3500

Counsel for the Applicants

October 15, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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Gulf States Utilities Company, et al.	)	Docket Nos. 50-458 50-459
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(River Bend Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of (1) "Applicants' Answer to Petitions of Louisianians for Safe Energy, Gretchen Rothschild, and Louisiana Consumers' League for Leave to Intervene," (2) "Notice of Appearance for Troy B. Conner, Jr.," and (3) "Notice of Appearance for Mark J. Wetterhahn" dated October 15, 1981, in the captioned matter have been served upon the following by deposit in the United States mail this 15th day of October, 1981.

Alan S. Rosenthal, Esq.
Atomic Safety and Licensing Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Richard F. Cole
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

B. Paul Cotter, Jr. Chairman
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Lee S. Dewey, Esq.
Counsel for NRC Regulatory Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. J. Venn Leeds
Rice University
P.O. Box 1892
Houston, Texas 77001

James E. Booker
Gulf States Utilities Company
P.O. Box 2951
Beaumont, Texas 77701

Mr. Chase R. Stephens
Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Gretchen R. Rothschild
Louisianians for Safe Energy, Inc.
1659 Glenmore Avenue
Baton Rouge, Louisiana 70808

Doris Falkenheiner, Esq.
Louisiana Consumers' League
535 North 6th Street
Baton Rouge, Louisiana 70802

Mark J. Wetterhahn