

November 10, 1981

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 ANSWER TO CEPA'S OCTOBER 28, 1981
SUPPLEMENT TO PETITION TO INTERVENE

On September 21, 1981, Consumers Education and Protective Association ("CEPA") filed a timely "Petition for Intervention and Request for a Hearing" in this docket. CEPA asserted standing on its own behalf and on behalf of its members, the majority of whom live within thirty miles of the facility. The petition stated that these members could be adversely affected in various ways by operation of the Limerick units. Attached to the petition was the affidavit of Lee Frissell, Executive Director of CEPA, stating that the petition was true and correct to the best of his knowledge and belief.

The NRC and Applicant filed answers to CEPA's petition.^{1/} The Staff took the position that CEPA's stated purpose, i.e., "to educate the

^{1/} "NRC Staff Response to Petitions to Intervene and Request for Hearing ..." (October 8, 1981), at 11-12. "Applicant's Answer to Consumers Education and Protective Association Petition to Intervene" (October 6, 1981).

8111120387 811110
PDR ADDCK 05000352
G PDR

DS07 sqi
DESIGNATED ORIGINAL

Certified By dm

public and its members about their rights as consumers and how to best advocate and protect those rights,"^{2/} was not directly related to matters within the zone of interests protected by the statutes governing this proceeding and that CEPA had not otherwise established in the petition how it might be affected by the outcome of the proceeding. On this basis, the Staff concluded that CEPA had not demonstrated standing to intervene on its own behalf.^{3/} Rather, CEPA's standing could only be derived from the alleged potential impacts of operation of the facility upon its members. The Staff concluded that the petition was deficient absent an amendment, filed under § 2.714(a)(3), which provided affidavits of members setting forth their interests and how those interests might be affected by the outcome of the proceeding, and authorizing CEPA to act on their behalf.

Applicant also found the petition deficient in that it did not establish the standing of CEPA on its own behalf or on behalf of its members. Applicant took the further position that CEPA had failed to identify "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene."^{4/}

^{2/} Petition, at 1.

^{3/} See Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390-91 (1979); Allied-General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422-23 (1976).

^{4/} See § 2.714(a)(2). The Staff believes that CEPA has adequately identified "aspects."

By its "Memorandum and Order Setting Schedule for Submission of Contentions and Other Preliminary Information" (October 14, 1981, hereinafter "Order"), the Atomic Safety and Licensing Board directed CEPA to file:

1. an affidavit of a person with authority to speak for CEPA stating that authorization has been given to CEPA to intervene in this proceeding and that Steven P. Hershey, Esq., has been authorized to act on CEPA's behalf, and
2. affidavits of members of CEPA setting forth their membership, their interests, and how those interests may be affected by the results of the proceeding, and authorizing CEPA to act on their behalf.^{5/}

On October 28, 1981, in response to the Board's Order, CEPA filed four affidavits of members "to supplement the affidavit and Petition to Intervene already filed on behalf of CEPA." The Staff herein files its answer to this "supplement" to CEPA's petition.

II. DISCUSSION

Each of the affiants states that he/she resides in Philadelphia (approximately twenty-five miles from the Limerick plant), is a member of CEPA, and authorizes CEPA to act on his/her behalf in this proceeding. Each of the affidavits recites slightly different interests in the outcome of the proceeding. Three of the affiants assert, as one of the

^{5/} Order, at 7.

bases for their standing, that their electric rates will increase as a result of the construction and operation of Limerick. Other interests asserted are:

1. that affiants' health and that of their families will be affected by airborne radioactive emissions from Limerick and by consumption of water from the Schuylkill, on which the plant is located (Werner and Haver affidavits);
2. that normal operation and emergencies will affect affiant because of inadequate safety measures and the impossibility of evacuation (Wimbish affidavit); and
3. that the financial drain on Applicant imposed by construction of Limerick (which is alleged to be more expensive than other means of providing power) will prevent Applicant from offering a "good" conservation program which affiants assert they need (Wimbish and Troxell affidavits).

The Staff believes that the affidavits filed by CEPA adequately state the interests of the affiants and how their interests might be affected by the outcome of the proceeding,^{6/} that they are members of CEPA, and that they authorize CEPA to represent their interests in this proceeding. We conclude that the affiants have demonstrated their standing to intervene in this proceeding. Affiants' statements of

^{6/} Louisiana Power & Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 n. 6 (1973); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633-34 (1973); Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 78 (1979).

interest based upon potential increases in their electric rates cannot, however, contribute to their claims of standing, since ratepayer interests are beyond the zone of interests protected by the statutes governing this proceeding.^{7/}

Although the individual affiants have authorized CEPA to act on their behalf, CEPA has not, as required by the Board, filed an affidavit of a person with authority to speak for the organization, stating that authorization has been given to CEPA to intervene in this proceeding and that Mr. Hershey has been authorized to represent the organization. The affidavit of Mr. Frissell, attached to the original petition, merely verified the truth of the statements in the petition and did not provide the information subsequently requested by the Board. Additionally, the supplement was filed by CEPA on October 28, 1981, two days beyond the filing date established in the Board's Order,^{8/} yet contains no explanation for CEPA's failure to file on time.

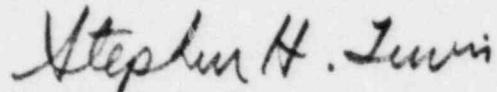
At present, CEPA's request to intervene remains deficient in that it has yet to supply the requested affidavit providing the necessary authorizations. We believe, however, that this defect can be cured by amendment to CEPA's petition under 10 C.F.R. § 2.714(a)(3). The Board

^{7/} Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (76); Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 n. 7 (1977).

^{8/} Order, at 5.

should also require CEPA to state, in that amendment, the reasons why it was unable to file its supplementary affidavits by the date directed by the Board. The Staff will state its position on CEPA's standing following a receipt of its amended petition.

Respectfully submitted,



Stephen H. Lewis
Counsel for NRC Staff

Dated at Bethesda, Maryland,
this 10th day of November, 1981.

Environmental Coalition on Nuclear
Power
Dr. Judith H. Johnsrud, Co-Director
433 Orlando Avenue
State College, PA 16801

Thomas Gerusky, Director
Bureau of Radiation Protection
Dept. of Environmental Resources
5th Floor, Fulton Bank Building
Third and Locust Streets
Harrisburg, PA 17120

Director
Pennsylvania Emergency Management
Agency
Basement, Transportation & Safety
Building
Harrisburg, PA 17120

John Shniper
Meeting House Law Bldg. & Gallery
Mennonite Church Rd.,
Schuylkill Rd. (Rte. 724)
Spring City, PA 19475

Robert L. Anthony
Friends of the Earth of the
Delaware Valley
103 Vernon Lane, Box 186
Moylan, PA 19065

Judith A. Dorsey, Esq.
Limerick Ecology Action
1315 Walnut Street, Suite 1632
Philadelphia, PA 19107

Donald S. Bronstein, Esq.
The National Lawyers Guild
Third Floor
1425 Walnut Street
Philadelphia, PA 19102

Steven Levin
11 Beard Circle
Phoenixville, PA 19460

Walter W. Cohen
Consumer Advocate
Office of Attorney General
1425 Strawberry Square
Harrisburg, PA 17120

Robert W. Adler
Assistant Counsel
Commonwealth of Pennsylvania, DER
505 Executive House,
P.O. Box 2357
Harrisburg, PA 17120

Randall Brubaker
Assistant Counsel
Commonwealth of Pennsylvania, DER
Room 1200, 1315 Walnut St.
Philadelphia, PA 19107

Joseph H. White III
11 South Merion Avenue
Bryn Mawr, PA 19010

Steven P. Hershey, Esq.
Consumers' Education
and Protective Association
Sylvania House
Juniper and Locust Streets
Philadelphia, PA 19107

Alan J. Nogee
The Keystone Alliance
3700 Chestnut Street
Philadelphia, PA 19104

Robert J. Sugarmann
Del-Aware Unlimited, Inc.
Berle, Butzel, Kass & Case
2115 Bainbridge Street
Philadelphia, PA 19146

William A. Lochstet
119 E. Aaron Drive
State College, PA 16801

Charles W. Elliott, Esq.
123 N. 5th Street, Suite 101
Allentown, PA 18102

Stephen H. Lewis

Stephen H. Lewis
Counsel for NRC Staff