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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, et al.

(Seabrook Station, Units 1 and 2)

Docket Nos. 50-443 OL  
50-444 OL



NRC STAFF RESPONSE TO PETITION TO INTERVENE AND  
REQUEST FOR HEARING BY REPRESENTATIVE ARNIE WIGHT

I. INTRODUCTION

On October 19, 1981, the Nuclear Regulatory Commission published in the Federal Register a notice of opportunity for a hearing on the application by Public Service Co. of New Hampshire, et al., for operating licenses for the Seabrook Station, Units 1 and 2 (46 Fed. Reg. 51330). The notice stated that requests for hearing and petitions to intervene could be filed by November 18, 1981. In response to the notice, the NRC received a timely petition to intervene from Arnie Wight, "as an individual who has a particular interest by reason of being an elected Representative to the General Court of the State of New Hampshire" where he states that he serves as chairman of committees dealing with matters relating to nuclear projects.

II. THE REQUIREMENTS FOR INTERVENTION

The basic requirements for intervention as a party in an NRC proceeding are described in 10 C.F.R. § 2.714. First, the petitioner must have standing

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to intervene. This is referred to in § 2.714(a) as an "interest" in the proceeding. Second, the petitioner must identify the specific aspects of the subject matter of the proceeding as to which it wishes to intervene (§ 2.714(a)(2)). Finally, at least fifteen days prior to the first pre-hearing conference to be held in the proceeding the petitioner must file at least one contention acceptable for litigation (§ 2.714(b)).

A. Interest or Standing

§ 2.714(a)(2) of the Commission's Rules of Practice requires that a petitioner must "... set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene . . ." Judicial tests of standing are to be applied to determine whether the showing establishes a legal right to intervene. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). Accordingly, to satisfy the "interest" or "standing" test it must be found that: (1) the petitioner will probably suffer an "injury in fact" as a result of the proposed licensing action;<sup>1/</sup> and (2) the alleged injury is within

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<sup>1/</sup> The "injury in fact" test requires that "... a cognizable interest of the petitioner might be adversely affected if the proceeding has one outcome rather than another." Public Service Co. of Indiana (Marble Hill Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

the "zone of interests" to be protected by the statutes governing the NRC.<sup>2/</sup>

An alleged potential injury may not be a generalized grievance shared by a large class of citizens, but must be a specific injury which the individual petitioner, in contrast to all members of the public, would suffer from the proposed action. Transnuclear Inc., CLI-77-24, 6 NRC 525, 531 (1977). Furthermore, in NRC practice, no one can be a private attorney general seeking to represent the "public interest." Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804, 806 n.6 (1976); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 484 (1977). See also, Sierra Club v. Morton, 405 U.S. 727, 739-740, (1972), and Allied-General Nuclear Services (Barnwell Fuel Receiving & Storage Station), ALAB-328, 3 NRC 420, 421-422 (1976), holding that a general interest in a problem is insufficient to confer standing.

An individual may represent only his or her own personal interests. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474-75 at n.1 (1978). See also, Warth v. Seldin, 422 U.S.

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<sup>2/</sup> The "zone of interest" test for judicial standing was established in Association of Data Processing Service Organizations v. Camp, 397 U.S. 150 (1970). The pertinent statutes to NRC proceedings are the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.), the Energy Reorganization Act of 1974, as amended (42 U.S.C. § 5801 et seq.), and the National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4332 et seq.). The zone of interest created by the Atomic Energy Act has been identified as "... an interest in the avoidance of a threat to health and safety as a result of radiological releases from the nuclear facility (either in normal operation or as a result of an accident)." Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 105 (1976). See also, Public Service Co. of Oklahoma (Black Fox, Units 1 and 2), ALAB-397, 5 NRC 1143 (1977).

490 (1975). The question of standing of a legislator was specifically discussed by the Licensing Board in General Electric Co. (G.E. Test Reactor, Vallecitos Nuclear Center), LBP-79-28, 10 NRC 578, 581-82 (1979). A legislator has a right to intervene only when it appears that he, personally, will be or might be, injured by the outcome of the proceeding. A legislator cannot be granted standing based solely upon his status as a legislator.<sup>3/</sup>

B. Specific Aspect of the Proceeding

In addition to demonstrating interest or standing, § 2.714(a)(2) requires that a petitioner state the particular aspects of the subject matter under review which the petitioner seeks to litigate. The indication of the special concern need not be in the form of a legal issue but should identify the areas which the petitioner intends to pursue when submitting formal contentions. Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978). The subject matter so identified must be within the scope of a licensing proceeding or it cannot be raised.<sup>4/</sup>

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3/ Pursuant to 10 C.F.R § 2.715(c) a state, county, municipality, or an agency of any of the foregoing, may participate as an "interested state." A legislator is not a governmental entity coming under this provision. General Electric Co., supra, at 582.

4/ See e.g. the following cases where matters without the jurisdiction of the Commission or licensing board were ruled inappropriate for consideration: Babcock & Wilcox (Application for Consideration of Facility Export License), CLI-77-18, 5 NRC 1332, 1348 (1977); Allied-General Nuclear Services (Barnwell Fuel Receiving & Storage Area), ALAB-328, 3 NRC 420, 422-423 (1976); Long Island Lighting Co. (Jamesport Nuclear Power Station), ALAB-292, 2 NRC 631 (1975).

### III. THE PETITION

By timely petition in the form of a letter dated November 16, 1981, Mr. Arnie Wight seeks intervention in this proceeding as an individual.<sup>5/</sup>

Petitioner describes his interest in the proceeding as resulting from his position as an elected Representative to the General Court of the State of New Hampshire. Petitioner further cites his service as Chairman of several committees interested in the safety and economics of nuclear power and nuclear waste management. Finally, the petition identifies three aspects of this proceeding which Mr. Wight intends to pursue in contentions: the safety lessons of TMI; the evacuation plan being developed in concert with FEMA; and, the plans that have been developed for managing nuclear wastes (Petition, p. 2).

#### A. Interest or Standing

In the view of the NRC Staff, Mr. Wight has failed to demonstrate the necessary interest for intervention of right, as an individual, in this proceeding. For an individual to have standing he must demonstrate that he, (1) will probably suffer an injury in fact as a result of the

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<sup>5/</sup> In his petition Mr. Wight has failed to designate whether he is seeking intervention as a party to this proceeding under 10 C.F.R. § 2.714 or whether he is seeking only limited non-party participation pursuant to 10 C.F.R. § 2.715(a). In the Staff's opinion Mr. Wight is probably seeking intervention as a full party because the petition attempts to satisfy the requirements of § 2.714.

proposed licensing action, and (2) that the injury is within the zone of interest protected by the statutes governing the NRC. Public Service Co. of Indiana (Marble Hill Generating Station, Units 1 and 2), CLI 80-10, 11 NRC 438, 439 (1980). Petitioner has failed to particularize any such specific injury, and asserts only a generalized grievance which is shared by many other citizens. See, Transnuclear Inc., CLI-77-24, supra.<sup>6/</sup>

Petitioner principally relies on his capacity as a state representative to assert an interest in working to support the health and safety of the public. However, a showing of standing must be based upon a legislator's personal interest and not his status as a legislator. General Electric Co., supra. Furthermore, a potential intervenor may only assert his or her own rights and interests to achieve standing - not the rights and interests of others or the general protection of the public. Warth v. Seldin, supra; Transnuclear, Inc., supra; Detroit Edison Co., supra.

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<sup>6/</sup> Similarly, a petitioner cannot gain standing by asserting such generalized interests as are created by being a taxpayer or a ratepayer of the Applicant. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977); Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614 (1976).

Although Mr. Wight has not demonstrated standing to intervene and his petition should now be denied, petitioners retain the right to amend their pleadings without leave of the Board until at least 15 days prior to the time set for the special Prehearing Conference. If Mr. Wight can demonstrate a personal specific injury to his health, safety, or environmental interests protected by the statutes governing the NRC, he may be granted standing to intervene as an individual.<sup>7/</sup> Petitioner may also seek limited participation as a non-party under 10 C.F.R. § 2.715(a).

B. Specific Aspect of the Proceeding

As we have indicated, Mr. Wight has stated that he wishes to participate in aspects of the proceeding concerning the safety lessons of TMI, the evacuation plans being developed, and the radioactive waste management plans. The designation of these aspects of the proceeding is sufficient to give notice of the subject matter petitioner wishes to litigate. See, Consumers Power Co., supra. Further the subjects are matters that may be litigated in NRC proceedings. Thus Mr. Wight has properly designated an aspect of the proceeding as to which he wishes to participate.

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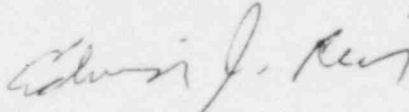
<sup>7/</sup> One means to establish such an interest would be a showing of residence within "close proximity" of the nuclear plant. Thirty to forty miles is generally considered to be a sufficient proximity to show interest to raise safety questions. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188-190.



IV. CONCLUSION

For the reasons set out above, the Staff believes that Mr. Wight, although designating an aspect of the proceeding as to which he wishes to participate, has not demonstrated standing to intervene. Thus the petition should be denied, subject to Petitioner's right to amend the pleading at least 10 days prior to the time designated for the Prehearing Conference to cure the defects identified by the Staff.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Edwin J. Reis".

Edwin J. Reis  
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland  
this 1st day of December 1981.



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CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF RESPONSE TO PETITION TO INTERVENE AND REQUEST FOR HEARING BY REPRESENTATIVE ARNIE WIGHT 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 1st day of December, 1981.

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