

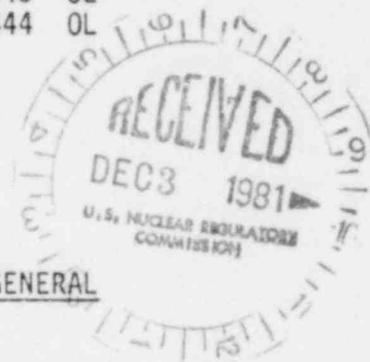
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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 PETITIONS
BY THE TOWN OF SOUTH HAMPTON, NH, THE STATE OF
MAINE PUBLIC ADVOCATE, AND THE STATE OF MAINE ATTORNEY GENERAL

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 timely petitions to intervene or participate from the Town of South Hampton, NH, (South Hampton), the State of Maine Public Advocate (Public Advocate), and the State of Maine Attorney General (Maine).

II. THE REQUIREMENTS FOR INTERVENTION

The basic requirements for intervention as a full party to an NRC proceeding are described in 10 C.F.R. § 2.714. First, the petitioner must have standing to intervene. This is referred to in § 2.714(a) as an

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"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 prehearing conference to be held in the proceeding the petitioner must file at least one contention acceptable for litigation (§ 2.714(b)).

As an alternative to full party intervention, 10 C.F.R. § 2.715(c) allows representatives of an interested state, county, municipality, or agency thereof, to participate without taking a position on the issues. For intervention under this section the government entity need only demonstrate a cognizable "interest".^{1/}

Judicial tests of standing are to be applied to determine whether a petitioner has demonstrated a cognizable interest for intervention. 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; and (2) the alleged injury is within the "zone of interests" to be protected by the statutes governing the NRC. Public

^{1/} It should be noted that even if a government entity elects to intervene as a full party under 10 C.F.R. § 2.714 on certain issues, it may still participate as an "interested state" under 10 C.F.R. § 2.715(c) as to other issues. Project Management Corp. (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383, 392-93 (1976).

Service Co. of Indiana (Marble Hill Generating Station, Units 1 and 2), CLI-80-10, 11 NRC 438, 439 (1980).

In their petitions, both the Public Advocate and the Attorney General have requested "interested state" intervention under § 2.715(c). In its petition, South Hampton has failed to explicitly designate whether it is seeking full intervention under § 2.714 or partial intervention under § 2.715(c). From a reading of the town's petition the Staff believes, however, that the town is seeking full party intervention.

III. THE PETITIONS

A. State of Maine - Attorney General

The Staff believes that the State of Maine, represented by the Attorney General, qualifies to participate in this proceeding as an interested State under 10 C.F.R. § 2.715(c). A state seeking intervention pursuant to § 2.715(c) need not be the state in which the reactor is located. Exxon Nuclear Company, Inc. (Nuclear Fuel Recovery and Recycling Center), ALAB-447, 6 NRC 873 (1977).^{2/} The proximity of Southern Maine is sufficient to establish Maine's interest in this proceeding. Furthermore, the Commission has emphasized that the participation of an interested sovereign state, as a full party or otherwise, is always desirable in the NRC licensing process. Public

^{2/} See, e.g., Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), CLI-74-32, 8 AEC 217 (1974), holding that a neighboring state has a cognizable interest in the proceeding when the discharge from a nuclear generating plant is close to the border of the state and may affect the state's water quality.

Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), CLI-77-25, 6 NRC 535 (1977).

Under § 2.715(c), the interested state or other government body need not furnish contentions or take a position on the issues. The state is nevertheless given an opportunity to introduce evidence, interrogate witnesses, and advise the Commission. The state may also file proposed findings and exceptions, and petitions for review by the Commission. However, this section does require that the state indicate with reasonable specificity, in advance of hearing, the subject matters on which it desires to participate. Furthermore, once admitted to the proceeding, an interested state must comply with all the procedural rules and is subject to the same requirements as other parties appearing before the Board. Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977).

B. State of Maine - Public Advocate

By a petition in the form of a letter dated November 17, 1981, the Maine Public Advocate has requested participation in this proceeding pursuant to 10 C.F.R. § 2.715(c). The petition describes the office of Maine Public Advocate as being established "pursuant to 35 M.R.S.A. § 1-A, to represent the Maine using and consuming public in matters affecting the customers of any utility doing business in the State of Maine" (Petition, paragraph 2). The petition further states that three Maine utilities are among the joint owners of Seabrook Station. The NRC Staff believes that this interest is insufficient for intervention in an NRC proceeding.

Section 2.715(c) allows limited participation by an "interested state, county, municipality and/or agency thereof." Even should the Public Advocate be an "agency" of the State of Maine under the terms of 10 C.F.R. § 2.715(c), it must still demonstrate a cognizable interest as a prerequisite to intervention. The Public Advocate's only stated concern is the economic effect of Seabrook on Maine utilities and consumers. It is now well settled that economic interests do not confer standing to intervene in NRC proceedings. Houston Lighting and Power Co. (Allen's Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 242 (1980).^{3/}

As a secondary basis for intervention, the Public Advocate briefly alleges an interest because many residents of southern Maine live relatively close to the Seabrook site. Should the Public Advocate be seeking to represent the residents of this area, in contrast to representing an "interested State, county, municipality and/or agencies thereof" as provided in 10 C.F.R. § 2.715(c), it has failed to identify these individuals, show that it has been authorized to represent them other than as consumers, or demonstrate that these individuals have

^{3/} Economic interests are not sufficient to allow standing as a matter of right because concern about rates is not within the scope of interests sought to be protected by the Atomic Energy Act. Kansas Gas and Electric Co., et al., (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 (1977). Nor is such interest within the zone of interests protected by the National Environmental Policy Act. Portland General Electric Co., et al., (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804 (1976).

"standing" to intervene in this proceeding.^{4/} Where one seeks to represent the interests of others arguably within the zone of interests protected by statutes enforced by this Commission, it must name the individuals it seeks to represent and show that it was authorized to represent those individuals. See Houston Lighting & Power Co. (Allens Creek Generating Station, Unit 1), ALAB-535, 9 NRC 377, 392-393 (1979); Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 421-423 (1976). Absent a further showing by the Public Advocate that it seeks to participate and has authorization to appear in this proceeding in areas protected by the Commission, the petition of the Public Advocate should be denied.^{5/}

C. Town of South Hampton

By a petition in the form of a letter dated November 12, 1981, the Town of South Hampton, New Hampshire, seeks to intervene in this proceeding. The petition does not state whether South Hampton seeks full party intervention under § 2.714 or "interested municipality" intervention under § 2.715(c). The Staff believes that South Hampton seeks to intervene as a full party because its petition seems aimed at satisfying the § 2.714 requirements.

4/ Residence within 30-40 miles of the site is usually held sufficient to raise safety questions. Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190 (1973).

5/ The Public Advocate has sought to participate under 10 C.F.R. § 2.715(c). Under 10 C.F.R. § 2.714(a)(3) a petition to intervene in a proceeding may be amended as of right up to 15 days prior to a designated prehearing conference.

1. Interest or Standing

South Hampton alleges that operation of the Seabrook Station will adversely affect its residents because of the effects which the proposed transmission lines would have on the town and surrounding areas. The petition describes four particular effects. First, the lines would travel over a ridge known as Indian Ground Hill, which has historical and archaeological significance. Second, the lines would damage the vistas from the historic district at the center of the town. Third, two historic areas - Jewelltown and Highland - are adversely impacted by the proposed route. Fourth, the petition alleges that property values would be decreased in the Kensington end of the commercial district, and elsewhere in the town, if the transmission lines are built as proposed.

The Staff believes that South Hampton has established that it has the requisite "interest" to intervene in this proceeding. The town has an understandable concern with the environmental issues associated with the proposed transmission lines. The principle that environmental injuries due to transmission lines are sufficient to confer standing was established in the Seabrook construction permit proceeding.^{6/} In that proceeding considerable attention was devoted to the environmental issues involved in determining the location of the lines needed to serve the facility. See, Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2), ALAB-442, 6 NRC 33, 82; See also,

^{6/} See also, Sierra Club v. Morton, 405 U.S. 727 (1972), holding that injury to aesthetic and environmental well being, like that to health, safety, and economic well being, may amount to an "injury in fact" sufficient to confer standing.

Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-247, 8 AEC 936 (1974).^{7/} Furthermore, concern with transmission line issues was considered within the zone of interests to be protected by the statutes governing this agency.^{8/}

2. Specific Aspect of the Proceeding

As we have indicated, South Hampton has stated that it wishes to participate in aspects of the proceeding concerning transmission lines emanating from the facility. The designation of this aspect of the proceeding is sufficient to give notice of the subject matter South Hampton wishes to litigate. See, Consumers Power Co. (Midland Plant, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978). Further, the subject (in at least some of the issues) is a matter that may be litigated in NRC proceedings. Thus, South Hampton has properly designated an aspect of the proceeding upon which it wishes to participate.

^{7/} Although the issues raised in South Hampton's petition to intervene demonstrate sufficient injury to satisfy the standing requirement, the Staff reserves the right to object to consideration in this operating license proceeding of issues which were or could have been litigated in the construction permit proceeding involving the Seabrook facility. Cf., Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, 212-13, remanded other grounds, CLI-74-12, 7 AEC 203 (1974).

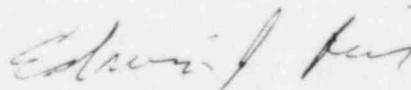
^{8/} Of the four specific injuries alleged by petitioner the first three concerning aesthetic and historical impacts would be within the zone of interest protected by the National Environmental Policy Act (NEPA). See, Sierra Club v. Morton, supra; C.f., Association of Data Processing Service Organization v. Camp, 397 U.S. 150 (1970) (establishing the "zone of interest" test for standing). Petitioner's fourth allegation of economic harm may be outside the scope of NRC protection under either NEPA or the Atomic Energy Act. See, Houston Lighting and Power Co. (Allen's Creek Nuclear Generating Station, Unit 1), ALAB-582, 11 NRC 239, 242 (1980).

IV. CONCLUSION

For the reasons set out above, the State of Maine Attorney General should be admitted to this proceeding as an interested state pursuant to 10 C.F.R. § 2.715(c). On the other hand, the State of Maine Public Advocate's petition under § 2.715(c) should be denied.

As stated above, the town of South Hampton has satisfied the standing and specific aspect requirements for intervention under 10 C.F.R. § 2.714. Therefore, upon submission of at least one admissable contention, South Hampton should be admitted as a party to this proceeding.

Respectfully submitted,



Edwin J. Rejs
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 2nd day of December, 1981.

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(Seabrook Station, Units 1 and 2)) 50-444 OL

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF RESPONSE TO PETITIONS BY THE TOWN OF SOUTH HAMPTON, NH, THE STATE OF MAINE PUBLIC ADVOCATE, AND THE STATE OF MAINE ATTORNEY GENERAL 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 2nd day of December, 1981.

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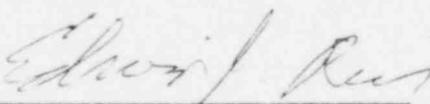
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