

must have standing 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 prehearing 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-76-26, 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;^{1/} and (2) the alleged injury is within

^{1/} 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.^{2/}

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). In NRC practice, no one can be a private attorney general seeking to represent a general "public interest." Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 484 (1977). Moreover, a potential intervenor may only assert his or her own rights and interests to achieve standing -- not the rights and interests of others. Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), ALAB-470, 7 NRC 473, 474-75 at n.1 (1978).

The Commission's case law has determined that sufficient interest or standing is shown by a petitioner's residence within a 30-40 mile radius of the plant. Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-197, 6 AEC 188, 190 (1973);

^{2/} 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).

Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1976). However, being a taxpayer does not give one standing to intervene as of right. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977). Similarly, because the NRC's authority extends only to matters of public health and safety or environmental impacts under the enabling statutes, economic harm to a ratepayer of the Applicant is not a sufficient interest. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), ALA3-333, 3 NRC 804 (1976).

An organization may petition to intervene and represent its members who would be affected by the proposed licensing action.^{3/} For an organization to have standing, however, it must: (1) identify at least one member; (2) submit an affidavit from that member which demonstrates that the individual has a sufficient particular interest in the proceeding; and (3) that the individual has authorized the organization to represent that interest. Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC 402, 404 (1979);

^{3/} An organization may represent only its own members, and not others. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 483 (1977).

Houston Lighting and Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 389-400 (1979).^{4/}

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.^{5/}

^{4/} This requirement results from the Supreme Court's holding in Sierra Club v. Morton, 405 U.S. 727 (1972), that a mere "interest in a problem," notwithstanding the experience or qualifications of the organization, is not sufficient to confer standing under the Administrative Procedure Act. The petition must include a particularization of how the interests of one or more members of the organization might be affected by the proposed action. See also, Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 429 (1976).

^{5/} 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 PETITIONS

A. Seacoast Anti-Pollution League

By timely petition dated November 13, 1981, Robert A. Backus, Esquire, requests intervention in this proceeding on behalf of the Seacoast Anti-Pollution League (SAPL). SAPL is described as a non-profit public interest organization that includes among its concerns the environmental issues associated with the 18-mile New Hampshire seacoast area which includes Seabrook Station. SAPL has been an Intervenor in the construction permit proceedings for Seabrook.

In its petition, SAPL has identified several specific concerns which it seeks to address in this operating license proceeding. These include the issues of emergency planning, consideration of alternatives, and generally, the protection of the public health and safety.

1. Interest or Standing

In the opinion of the NRC Staff, SAPL, by its present petition has failed to satisfy the "interest" or "standing" test of 10 C.F.R. § 2.714. As an organization seeking to represent its members, SAPL must supply at least one affidavit establishing: (1) the identity of one member; (2) that the member will suffer an "injury in fact" within the "zones of interests" to be protected by the NRC; and (3) that the member has authorized SAPL to represent his or her interests. Houston Lighting and Power Co., supra at 392-93. As the Supreme Court held in Sierra Club v. Morton, supra at 739, ". . . a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or

'aggrieved' within the meaning of the APA." SAPL's petition does not include an affidavit from, or even identify, a member who will suffer an "injury in fact" within the "zone of interests" to be protected by the NRC, or indicate that such a member has authorized SAPL to represent him or her in this proceeding. Absent such affidavit the "standing" of SAPL to intervene has not been shown. Under 10 C.F.R. § 2.714(a)(3) SAPL has the opportunity to amend its petition to provide the requisite affidavit(s) at any time until 15 days prior to a designated prehearing conference.^{6/} Until such amendment is made, SAPL's petition to intervene should be denied.

2. Specific Aspect of the Proceeding

As we have indicated, SAPL has stated that it wishes to participate in aspects of the proceedings concerning emergency planning, consideration of alternatives, and protection of the public safety. In the opinion of the Staff, only SAPL's expressed concern with emergency planning issues sufficiently designates a specific aspect of the proceeding to meet the requirement of 10 C.F.R. § 2.714(a)(2). SAPL's other listed interests are too vague to give notice as to the areas SAPL wishes to litigate. See, Consumers Power Co., supra. Nevertheless, emergency planning is a matter which may be litigated in NRC proceedings,

^{6/} One means by which SAPL could meet the standing test would be to provide an affidavit from a member who lives 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., supra at 190.

and thus SAPL has properly designated the minimum of one aspect of the proceeding in which it wishes to participate.

B. New England Coalition on Nuclear Pollution

By a timely petition dated November 18, 1981, the New England Coalition on Nuclear Pollution (Coalition) requests intervention and a hearing in this proceeding. Attached to the petition are affidavits of seven persons who state that they are members of the Coalition, that they live within distances of one to eight miles from the Seabrook Station, and that they have authorized representation of their interests in this proceeding by the Coalition legal counsel. By an amendment mailed November 20, 1981, the Coalition added an eighth such affidavit to their petition to intervene.

The petition describes the Coalition as an incorporated, non-profit organization of approximately 500 members with the goal of advocating the development of safe energy alternatives and educating the public about nuclear hazards, energy conservation, and alternative energy sources (Petition, p. 1). The Coalition has been an Intervenor in the Seabrook construction permit proceeding.

The petition alleges that operation of the Seabrook facility will adversely affect Coalition members -- who live, work, and recreate in the area of the facility -- by routine and accidental releases of radioactivity. Further, it is alleged that some of the members' property values could be affected by an emergency at the plant.

Twenty specific aspects of the proceeding for which Coalition wishes to intervene are listed, some of which are the issues of hydrogen

control, requirements for the consideration of Class 9 accidents, seismic hazards, emergency planning, and financial qualifications.

1. Interest or Standing

The Staff believes that the Coalition, through the affidavits of its members who live and work near the Seabrook site, has met the three prong requirement for standing by an organization. See, Houston Lighting and Power Co., supra at 389-400 (establishes the requirements for intervention by an organization). The affidavits identify eight members of the Coalition by name and address. Each of the members lives within eight miles of Seabrook Station, thereby demonstrating their particular interest in the proceeding. Residence within 30-40 miles of a plant is generally held to be sufficient standing for individuals to raise safety questions. Northern States Power Co., supra at 190; see also, Tennessee Valley Authority, supra at 1421 at n.4. Finally, the Coalition members have shown in their affidavits authorization for the Coalition, by their designated counsel, to represent their personal interests in this proceeding.

2. Specific Aspect of the Proceeding

In addition to demonstrating interest or standing, the Staff believes that the petitioner has satisfactorily set forth the specific aspects of the proceeding as to which it seeks to intervene.^{7/} This pleading requirement has only been specifically addressed by NRC tribunals on a few occasions, and is satisfied so long as the petitioner

^{7/} This showing is pursuant to 10 C.F.R. § 2.714(a)(2).

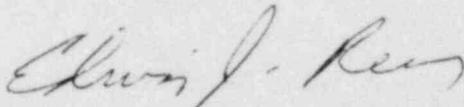
provides notice to the Board and parties of the subjects the petitioner intends to pursue when submitting formal contentions. See, Consumers Power Co., supra at 278. Thus, the Staff would support admission of the Coalition as a party to this proceeding upon its submission of at least one admissible contention by supplement to the petition to intervene, at least fifteen days prior to a designated prehearing conference.

IV. CONCLUSION

For the reasons set out above, the Staff believes that Seacoast Anti-Pollution League, although designating an aspect of the proceeding on which it wishes to intervene, has not demonstrated standing to intervene. Thus the petition should be denied, subject to Petitioner's right to amend the pleading under 10 CFR §2.714(a)(3) to cure the defects identified by the Staff.

For the reasons set out above, the Staff believes that the New England Coalition on Nuclear Pollution has demonstrated standing to intervene and has 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 a party to the proceeding.

Respectfully submitted,



Edwin J. Reis
Assistant Chief Hearing Counsel

Dated at Bethesda, Maryland
this 3rd day of December, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PUBLIC SERVICE COMPANY OF) Docket Nos. 50-443 OL
NEW HAMPSHIRE, et al.) 50-444 OL
)
(Seabrook Station, Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO PETITIONS TO INTERVENE AND REQUESTS FOR HEARING BY SEACOAST ANTI-POLLUTION LEAGUE AND NEW ENGLAND COALITION ON NUCLEAR POLLUTION" 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 3rd day of December, 1981:

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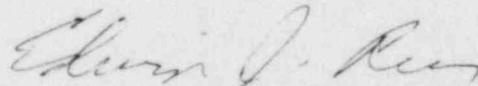
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