UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Gulf States Utilities Company,	)	Docket No. 50-458
et al.	)	50-459
	)	
(River Bend Station, Units 1 and 2)	)	

APPLICANT'S OPPOSITION TO SUBMISSION BY LOUISIANA CONSUMER'S LEAGUE, INC. REGARDING LITIGABLE INTEREST IN EVACUATION PLANS

Preliminary Statement

In its "Memorandum and Order Ruling on Petitions to Intervene" ("Memorandum and Order") of February 10, 1982, the Atomic Safety and Licensing Board ("Licensing Board") ruled that one of the petitioners for intervention in this proceeding, Louisiana Consumer's League, Inc. ("LCL") had failed to establish its interest in the evacuation of low and moderate income persons, as pleaded in Item III-4 of the LCL petition for intervention. 1/

By letter dated February 24, 1982, 2/ LCL submitted an affidavit from John F. Robbert, the President of LCL, and affidavits from other persons stating their desire to have

---

1/ Memorandum and Order at p. 8.

2/ Counsel for Applicant did not receive the letter and attachments until March 4, 1982.

D503
S01

LCL represent their interests in this proceeding concerning safe evacuation in the event of a major accident at the River Bend facility. The affidavits attempt to establish a nexus between the concerns of certain individuals living outside the plume exposure EPZ regarding evacuation and LCL's organizational concerns in this area.

Applicant Gulf States Utilities Company, et al. ("Applicant") opposes this submission on the ground that the Licensing Board has already properly determined the scope of LCL's litigable interests. LCL has not presented any new information to justify a different ruling. Specifically, the form affidavits it proffers fail to demonstrate a litigable interest either on the part of the individual affiants or LCL as an organizational representative. Accordingly, the Licensing Board should deny LCL's request to reconsider its prior ruling.

Argument

The submittal by LCL constitutes, in effect, a request for the Licensing Board to reconsider its earlier decision. As the Appeal Board noted in the Marble Hill proceeding, ordinarily "[t]he unreserved decision on a question of law or fact made during the course of litigation settles that question for all subsequent stages of the suit" as the law of the case. 3/ No basis has been shown here by way of the

---

3/ Public Service Company of Indiana, Inc., (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253, 259 (1978).

affidavits submitted by LCL for reconsidering the Licensing Board's prior determination that LCL lacks any legal interest in the evacuation of low and moderate income persons.

In any event, the affidavits fall far short of demonstrating the standing of LCL or the individual affiants to litigate issues pertaining to evacuation plans. As the Licensing Board observed in its Order, where the prospective intervenor is an organization, it must establish standing through its individual members. The organizational petitioner must identify specific members and demonstrate how their particular interest may be affected by the outcome of the proceeding. 4/ Since organizational standing is wholly derivative in nature, a petitioner such as LCL can litigate only those issues which its individual members would have standing to raise.

In this respect, the recent submission by LCL is defective for three reasons. First, none of the three affidavits submitted to demonstrate the requisite "injury in fact" or interest "arguably within the zone of interests" 5/ is proffered by an individual who is a member of LCL. The

---

4/ Memorandum and Order at p. 3-4. See also Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390 (1979); 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).

5/ Memorandum and Order at p. 3.

mere statement by the affiants that they authorize LCL to represent their interests in this proceeding is clearly insufficient. While an organization may establish standing on the basis of its members' interests, neither the Commission's rules on intervention nor the judicial concepts of standing they incorporate permit an organization to act as a self-appointed private attorney general to represent the broad interests of non-members whether "low-income" or not.

Second, each of the affidavits merely states a generalized "concern" about safe evacuation in the event of an accident. This asserted concern is clearly an inadequate basis for standing (and for LCL's standing derivatively). The requirements for emergency planning under the Commission's Rules are clear that "the plume exposure pathway EPZ for nuclear power plants shall consist of an area about 10 miles (16 km) in radius," give or take minor adjustments as to the exact size and configuration. See 10 C.F.R. §50.47(c)(2).

Accordingly, each of the affiants, who live "about 20 miles" away from the River Bend facility, lacks the requisite personal stake in evacuation planning necessary to show any possible personal injury that would give rise to standing. 6/ Moreover, any attempt by LCL to litigate evacuation planning with respect to these affiants would necessarily involve an impermissible attack upon 10 C.F.R.

6/ Memorandum and Order at p. 3.

§50.47(c)(2), which sets the 10-mile standard for the plume Emergency Planning Zone ("EPZ"). Other licensing boards have struck down attempts to significantly expand the 10-mile EPZ as suggested by petitioners. 7/ Finally, since NRC regulations do not purport to require evacuation beyond the roughly 10-mile plume exposure EPZ, the affiants have not asserted an interest "arguably within the zone of interests" protected by emergency planning regulations in general.

Third, the mere expression of a "concern" regarding safe evacuation is, in any event, insufficient to establish standing. The Commission settled this question in Edlow International Company (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 NRC 563, 572 (1976), where it quoted with approval a decision by the Supreme Court denying standing in Sierra Club v. Morton, 405 U.S. 727, 739 (1972):

> [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.

Since the affiants have not established that they fall within the ambit of the regulations regarding evacuation planning,

---

7/ South Carolina Electric and Gas Company (Virgil C. Summer Nuclear Station, Unit 1), Docket No. 50-395, "Memorandum and Order" (September 14, 1981)(slip opinion at 5). See also Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3), Docket Nos. 50-361 and 50-362 OL, "Order" (September 14, 1981)(slip opinion at 9-10).

it necessarily follows that any expressed concern over any possible personal impact is so "speculative" [8/] that it cannot satisfy the injury in fact requirements for standing. In simple terms, these affiants (and LCL derivatively) have failed to "show a distinct and palpable harm" to themselves. Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977).

In the same vein, the affidavit of John S. Robbert, President of LCL, merely expresses LCL's organizational concerns which, no matter how sincerely pursued, are no substitute for the concrete injury in fact necessary for standing. LCL cannot represent the interests of members who themselves lack standing and certainly cannot represent the interests of non-members of the general public.

Conclusion

For the reasons more fully discussed above, neither LCL nor the affiants it purports to represent have demonstrated standing to pursue issues pertaining to evacuation planning for the River Bend facility. Accordingly, the Licensing Board should not depart from its prior ruling of February 10,

---

8/ 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).

1982 that LCL has failed to establish its member's interests, if any, in this area.

Respectfully submitted

CONNER & WETTERHAHN

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

March 11, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Gulf States Utilities Company,	)	Docket No. 50-458
et al.	)	50-459
	)	
(River Bend Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Opposition to Submission by Louisiana Consumer's League, Inc. Regarding Litigable Interest in Evacuation Plans," in the captioned matter have been served upon the following by deposit in the United States mail this 11th day of March, 1981.

Alan S. Rosenthal, Esq.
Atomic Safety and Licensing
Appeal Board
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

Dr. Forrest J. Remick
Atomic Safety and Licensing
Board Panel
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

Docketing and Service Branch
Office of the Secretary
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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

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

Linda B. Watkins, Esq.
Staff Attorney
State of Louisiana
Department of Justice
7434 Perkins Road
Suite C
Baton Rouge, LA 70808

Gretchen R. Rothschild, Esq.
1659 Glenmore Avenue
Baton Rouge, LA 70808

Doris Falkenheiner, Esq.
535 North 6th Street
Baton Rouge, LA 70802

Mark J. Wetterhahn