

03/24/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
GULF STATES UTILITIES CO.,
et al.
(River Bend Station, Units 1 & 2)

Docket Nos. 50-458
50-459



STAFF RESPONSE TO AMENDED PETITION TO
INTERVENE OF LOUISIANANS FOR SAFE ENERGY

I. INTRODUCTION

In its February 10, 1981 Order ruling on intervention, the Licensing Board pointed out certain deficiencies in the petitions to intervene of Louisianans for Safe Energy (LSE) and Gretchen Reinke Rothschild and granted them until March 9, 1982 to amend their petitions. By a letter dated March 9, 1982, these petitioners have attempted to correct these deficiencies. In Staff's opinion, the Board's requirements have now been satisfied and LSE and Ms. Rothschild have established standing to intervene in this proceeding.

II. DISCUSSION

The Licensing Board's February 10, 1982 Order held that LSE's and Ms. Rothschild's petitions to intervene satisfied the "aspects" requirements for intervention in the River Bend OL proceeding by listing at least one "aspect" that might be sufficient in framing an acceptable contention for litigation. The Board ruled, however, that these

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petitioners still lacked standing because they had not demonstrated that their members would be included within the "zone of interest" in this proceeding. According to the Board, this defect could be cured by:

. . . . filing affidavits from those members living within 15 to 30 miles of the River Bend facility which would show how the members would be affected by the proceeding, that the member's interest is within the zones of interest to be protected or regulated by the statutes and rules applicable to this proceeding, and that the member has authorized the organization to protect his interest.

In response to the Board's Order, petitioners have submitted affidavits from five individuals who attest that they are members of the LSE, that they have authorized this organization to represent their interests in this proceeding, and that they reside within thirty miles of the River Bend facility. These affiants also have asserted that their drinking water and food that they grow^{1/} may be affected by this facility. Staff believes that LSE has now cured the defects in its petition and established standing to intervene in this proceeding since it has been held in a number of NRC cases that residency within a close proximity of a nuclear facility is a sufficient basis to establish standing. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421, n.4 (1977).^{2/}

^{1/} Four of the five LSE members attest that they grow substantial amounts of food which they and their families consume.

^{2/} For a full discussion of the legal requirements regarding standing to intervene see "Staff Response to Petitions to Intervene By Louisiana Consumer's League, Inc. and Louisianans for Safe Energy, Inc.," pp. 1-4 (Oct. 21, 1981).

Staff also believes that Gretchen Reinke Rothschild has standing to intervene by establishing that her residences are in close proximity to the River Bend facility. She attests that she resides within thirty miles of the facility in Baton Rouge, Louisiana and that she and her family also maintain a residence eight miles from the facility in West Feliciana Parish where they spend significant periods of time.

Although not affecting the status of Ms. Rothschild's standing to intervene, one aspect of her affidavit which should be commented upon concerns the fact that she has authorized LSE to represent her interests in this proceeding. Contrary to her desire to be represented by this organization, 10 C.F.R. § 2.713(b) only allows a person to be represented by himself or by an attorney at law. Furthermore, because Ms. Rothschild is not a member of LSE (or if she is, this has not been asserted), LSE cannot represent her since it is well established that parties in NRC proceedings can only assert their own interests and not the interests of third parties. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2), ALAB-413, 5 NRC 1418, 1421 (1977), Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-11, 7 NRC 381, 387, aff'd, ALAB-470, 7 NRC 473 (1978).^{3/} In fact, an NRC Licensing Board has specifically ruled on this point in holding that an organization which is a party to an NRC proceeding may not represent persons other than its

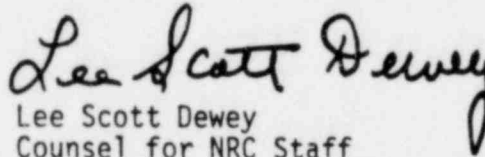
^{3/} Cf.: Houston Lighting and Power Company (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 647 (1979), citing Sierra Club v. Morton, 405 U.S. 727 (1972).

own members. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481 (1977).^{4/}

III. CONCLUSION

The amended petitions of LSE and Ms. Rothschild have established their standing to intervene in this proceeding. However, before a hearing can be held regarding their petitions, petitioners have until 15 days prior to a prehearing conference to set forth at least one acceptable contention for litigation.

Respectfully submitted,


Lee Scott Dewey
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 24th day of March, 1982.

^{4/} However, it should be pointed out that in Shoreham, unlike the situation in this proceeding, the intervenor organization did not obtain authorization from nonmembers to represent their interests. In concluding that this intervenor was not eligible to represent nonmembers, the Shoreham Board implied that if express authority had been obtained, the organization might have been allowed to do so. Contrary to this dicta by the Shoreham Licensing Board, even though in this proceeding authorization has been obtained by LSE from Ms. Rothschild, Staff nevertheless believes LSE should not be allowed to represent her because it is not an attorney at law.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "STAFF RESPONSE TO AMENDED PETITION TO INTERVENE OF LOUISIANANS FOR SAFE ENERGY" 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 24th day of March, 1982:

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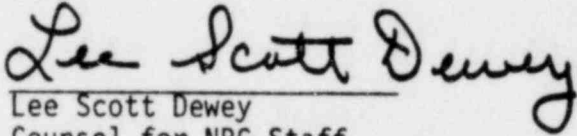
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