

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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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 AMENDED
PETITION BY LOUISIANIANS FOR SAFE ENERGY

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 the petition for intervention filed by Louisianians for Safe Energy ("LSE") would be denied and dismissed for failure to satisfy the requirements of 10 C.F.R. §2.714(d). The Licensing Board stated that the petitions would be reconsidered if an amended petition in compliance with these requirements was submitted by March 9, 1982.

By letter dated March 6, 1982, LSE submitted the affidavits of five individuals as an amendment to its original petition. An affidavit from Gretchen Reinike Rothschild was also submitted in support of her original petition. The LSE affidavits attempt to establish a litigable interest on the part of its members in this

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proceeding and the organization. Petitioner Rothschild also attempts to establish such an interest on her own behalf. However, for the reasons more fully discussed in Applicants' original answer to these petitions, 1/ the affidavits still fall far short of the necessary showing of the personal, concrete injury in fact required for standing. Accordingly, the Licensing Board should adhere to its prior ruling that petitioners LSE and Rothschild have failed to comply with the requirements for intervention under 10 C.F.R. §2.714(d).

Argument

As Applicant has noted in its prior submission, the Commission's rules provide specific requirements for those seeking to intervene in licensing proceedings. In particular, a petition for leave to intervene must discuss each of the following:

- (1) The nature of the petitioner's right under the Act to be made a party to the proceeding.
- (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
- (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest. 2/

The discussion of these particulars in a petition for leave to intervene must, under the Commission's decisions

1/ See Applicants' Answer to Petitions of Louisianians for Safe Energy, Gretchen Rothschild, and Louisiana Consumers' League for Leave to Intervene (October 15, 1981).

2/ 10 C.F.R. §2.714(d).

incorporating judicial concepts of legal standing, "show a distinct and palpable harm" to petitioners. ^{3/} A mere expression of concern in a given area amounts to only a "generalized grievance" ^{4/} and, as such, establishes only "a mere 'interest' in a problem," ^{5/} which, as Applicant has previously noted, is insufficient for standing.

Without the necessary showing of individualized injury in fact required by the Commission's regulations and judicial precedent, a petitioner cannot satisfactorily demonstrate that it "will or might be injured in fact by one or more of the possible outcomes of the proceeding." ^{6/}

Examining the affidavits submitted by petitioners LSE and Rothschild with these principles in mind, it is Applicant's view that no adequate showing has been made by the recent submission. Each of the affiants simply states that he or she resides within 30 miles of the River Bend facility, obtains drinking water from the aquifer which is located "in and around West Feliciana Parish, Louisiana, the site of the River Bend nuclear facility," and grows food

3/ Transnuclear, Inc., CLI-77-24, 6 NRC 525, 531 (1977).

4/ Transnuclear, Inc., supra, citing Warth v. Seldin, 422 U.S. 490, 499 (1975).

5/ Sierra Club v. Morton, 405 U.S. 727, 739 (1972), cited 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).

6/ Nuclear Engineering Company, Inc., (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 740 (1978).

in a home garden. In these circumstances, petitioners have not truly "identified, let alone particularized, and specific injury [they] . . . would or might sustain." ^{7/} Such affidavits wholly fail to distinguish affiants from the rest of the general public which likewise draws water from the aquifer located "in and around West Feliciana Parrish," or the multitude of other individuals in that area with home gardens.

As a separate deficiency, the mere statement by affiants that they drink water from a common aquifer and grow food is entirely lacking in any allegation of injury in fact as a result of the licensing of the River Bend facility. To hypothesize how these individual affiants believe that the issuance of an operating license would adversely affect their personal consumption of food and water would require impermissible speculation. ^{8/} Since LSE as an organization has only derivative standing to represent the stated interests of its members, ^{9/} such information must in the first instance be supplied by the member himself because it constitutes a necessary element of the member's individual standing. The statement by LSE in

7/ Sheffield, supra at 741.

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).

9/ See generally Applicant's Opposition to Submission by Louisiana Consumer's League, Inc. Regarding Litigable Interest in Evacuation Plans at 3 (March 11, 1982).

its original petition that it wishes to pursue certain issues therefore cannot satisfy the requirement under 10 C.F.R. §2.714(d)(3) that a petitioner must show the "possible effect of any order which may be entered in the proceeding on the petitioner's interest." ^{10/} as construed in the Commission's precedents and in view of the judicial concepts of standing upon which they rely. ^{11/}

Conclusion

For the reasons more fully discussed above, petitioners LSE and Rothschild have failed to demonstrate the requisite personal, concrete injury in fact necessary for standing under the Commission's rules for intervention. Accordingly, the Licensing Board should adhere to its prior ruling of February 10, 1982 that petitioners have not made a sufficient showing for intervention in this proceeding.

Respectfully submitted,

CONNER & WETTERHAHN

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March 22, 1982

10/ 10 C.F.R. §2.714(d)(3).

11/ Of course, the affidavits, including that of petitioner Rothschild, are in any event insufficient for the first reason discussed above because they improperly seek intervention "in order to vindicate broad public interests said to be of particular concern" to them. Sheffield, supra at 741.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Opposition to Amended Petition by Louisianians for Safe Energy," in the captioned matter have been served upon the following by deposit in the United States mail this 22nd day of March, 1982.

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