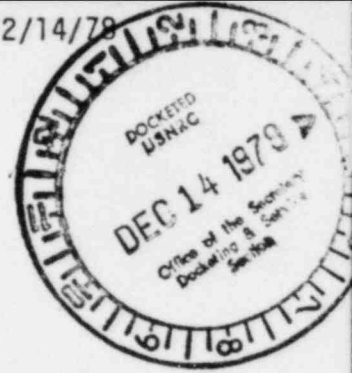


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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of	)	
WASHINGTON PUBLIC POWER SUPPLY SYSTEM	)	Docket No. 50-397 (OL)
(WPPSS Nuclear Project No. 2)	)	

NRC STAFF RESPONSE TO AMENDED PETITION FOR LEAVE TO INTERVENE

I. Background

On July 26, 1978, the Nuclear Regulatory Commission published a Notice of Opportunity for Hearing in the captioned matter. 43 Fed. Reg. 32338 (1978). The Commission indicated in the Notice that the application for an operating license for WPPSS Nuclear Project No. 2 ("WNP-2") had been docketed, and that Commission consideration of the application had commenced. The Commission also indicated that "any person whose interest may be affected by this proceeding may file a petition for leave to intervene" by August 28, 1978.

A petition to intervene dated August 28, 1978, was filed by Susan M. Garrett, Helen Vozenilek and the Hanford Conversion Project, which petitioners describe as a "non-profit, activists' coalition of individuals and member groups concerned with the issues of nuclear energy and nuclear weaponry." (Petition, page 3).

The NRC Staff responded on September 18, 1978 by opposing the petition but indicated that, in accordance with 10 CFR 2.714(a)(3), petitioner had

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until 15 days before the special prehearing conference to cure any defects by amending their petition.<sup>1/</sup>

Applicant answered the petition on September 22, 1978, concluding that the petition should not be granted.

On November 10, 1978, petitioners filed a 44-page "Amended Petition for Leave to Intervene" and a 14-page "Insert to Petitioner's Amended Petition for Leave to Intervene."<sup>2/</sup> (These two documents will be referred to hereafter as the Amended Petition.)

The Amended Petition sets forth at length seven contentions and the basis for each. Attached to the Amended Petition are affidavits on behalf of a number of members of the Hanford Conversion Project.

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<sup>1/</sup> The special prehearing conference has been scheduled by the Board for January 11, 1979.

<sup>2/</sup> Applicant and Staff have discussed in previous pleadings general principles of law applicable to intervention. These principles will not be repeated here except to note that because this is an operating license proceeding "...[t]here is, accordingly, especially strong reason ...why, before granting an intervention petition and thus triggering a hearing, a licensing board should take the utmost care to satisfy itself fully that there is at least one contention advanced in the petition which, on its face, raises an issue clearly open to adjudication in the proceeding.' We need only add that a board should take equal care in these cases to assure itself that potential intervenors do have a real stake in the proceeding. See Sierra Club v. Morton, *supra*, 405 U.S. at 739." Cincinnati Gas & Electric Company, et al. (William H. Zimmer Nuclear Power Station), ALAB-305, 3 NRC, 8, 12.

Interest of Helen Vozenilek

In a recent conference call, the parties were informed that Helen Vozenilek would no longer participate in these proceedings. The Board requested that information in writing. The affidavit of Terry SoRelle attached to the Amended Petition states that Creg Darby is replacing Helen Vozenilek as a representative of Hanford Conversion Project in this proceeding.

Interest of Susan M. Garrett and Creg Darby

Ms. Garrett and Mr. Darby live over 150 miles from the site. Residence 150 miles away cannot be used as a basis for standing.<sup>1/</sup>

Ms. Garrett and Mr. Darby claim that they consume fish, milk and meat which have all been grown, raised or produced within 50 miles of the Hanford Reservation and the Columbia River. Assuming these petitioners' claim to be true, they assert no more than a generalized grievance shared in substantially equal measure by a large class of citizens (presumably everyone within 150 miles of the site). It is the Staff's view that their interest is insufficient.<sup>2/</sup>

<sup>1/</sup> In Tennessee Valley Authority (Watts Barr Nuclear Plant, Units 1 and 2), ALAB-413, 5 AEC 1418 at 1421, footnote 4, the Appeal Board noted that 50 miles is not so great as necessarily to have precluded a finding of standing based on residence that distant from the reactor. In Dairyland Power Cooperative (LaCrosse Boilding Water Reactor), ALAB-497, 8 NRC September 20, 1978, the Appeal Board affirmed, without discussion, the Licensing Board's finding that petitioners who resided more than 75 miles from the facility had failed to establish an interest sufficient to entitle them to intervene.

<sup>2/</sup> "The fact that injury to members may be shared by the many rather than the few does not make them less deserving of legal protection through the judicial process. Sierra Club v. Morton, 405 U.S. 727, 735. (1972).

"If Petitioners allege a concrete and direct injury, their claim of standing is not impaired merely because similar harm is suffered by many others. However, if petitioners' "asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction," Edlow International Company, CLI-76-6, 3 NRC 563, 576 (May 7, 1976).

Interest of Hanford Conversion Project

No attempt is made to seek admission of the Hanford Conversion Project based on injury to that organization.<sup>1/</sup> Admission of the Hanford Conversion Project is sought on the basis of the interest of its members.<sup>2/</sup>

<sup>1/</sup> In Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 AEC 420 at 423, the Appeal Board deferred to the Licensing Board's decision finding interest on behalf of the "221 Pickens Street Organization", absent discussion of injury to its members.

<sup>2/</sup> In Public Service Company of Indiana, Inc., (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, the Appeal Board stated:

The applicant acknowledges, as it must, that in Sierra Club v. Morton the Supreme Court said that "[i]t is clear that an organization whose members are injured may represent those members in a proceeding for judicial review," 405 U.S. 727, 739 (1972), and that in Warth v. Seldin the Court further observed that "[e]ven in the absence of injury to itself, an association may have standing solely as the representative of its members," 422 U.S. 490, 511, 45 L.Ed.2d 343, 362 (1975). But the applicant insists that those statements are dicta, not holdings, and that we therefore need not follow them. It urges that, instead (Br. p. 7), we "adopt the approach suggested by the Ninth Circuit in NRDC v. EPA, supra, and hold that a corporation cannot claim standing to represent its members unless it first establishes a cognizable injury to its own corporate interest." Even if we accept arguendo applicant's conclusion that the quoted Supreme Court pronouncements are dicta, we are inclined to the view that a word to the wise from that source is sufficient.<sup>3</sup> [footnote omitted].

"Representative standing" was also held acceptable by the Commission, despite NRDC v. EPA, 507 F2d. 905, in Edlow International Company, CLI-76-6, 3 NRC 563, 574 (May 7, 1976).

Six affidavits relating to interest are attached to the Amended Petition. Five of the affidavits (Terry Stratton, Ruth C. Long, Nancy Faller, Deborah D. Beadle and Albert Snow) set forth the interest of the member and incorporate all 58 pages of the Amended Petition as a discussion of their interest and how that interest may be affected by the results of this proceeding. That this is permissible was made clear by the Appeal Board in Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188 (March 29, 1973).

Five affidavits differ essentially in the distance the affiant claims to live from the proposed project. Ruth C. Long claims to live 12 miles from the proposed site.<sup>1/</sup> She claims membership in Hanford Conversion Project, and she authorizes Susan M. Garrett, Terry SoRelle "and any other person designated by the Hanford Conversion Project to represent her interests in this proceeding." The Staff submits that a fair reading of the form affidavit (which incorporates the Amended Petition) indicates Ms. Long's intent to permit the Hanford Conversion Project to represent her interests. By incorporating all 58 pages of the Amended Petition into her affidavit

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<sup>1/</sup> The other four affidavits claim distances of 55, 58, 60 and 80 miles.



Ms. Long sets forth with particularity many ways in which her interest may be affected by the results of this proceeding. These are listed on pages 4 through 6 of the Amended Petition and are within the zone of interests to be protected in this proceeding.

The Staff suggests that the Board require Petitioners to clarify the status of membership of Ruth C. Long in the Hanford Conversion Project. She was not listed as a member in the original Petition for Leave to Intervene. If the admission of Hanford Conversion Project is based on Ms. Long's interest, and if Ms. Long was not a member when the Petition for Leave to Intervene was filed, this Board should require a showing of good cause for failure to file on time. Otherwise, Petitioner would be admitted on a basis not extant on the date the Petition was required to be filed.

The sixth affidavit - that of A. C. Roll - does not incorporate the Amended Petition. It purports to stand on its own.

Mr. Roll claims interest through his ownership of land "approximately 10 to 15 miles" down the Columbia River from the proposed site. His interest is economic. He fears a decrease in rental value of his land and damage to his land. Except to the extent of personal economic damage,

he claims no other injury to himself.<sup>1/</sup> If Mr. Roll's affidavit does not meet the precise requirements of Watts Bar, supra and Jamesport, supra, it appears clear that his affidavit does set forth an injury within the zone of interests to be protected by the Atomic Energy Act.<sup>2/</sup> He claims "the new reactor would pose a threat to health and safety and the condition of the environment." It should be clarified that Mr. Roll may not advance a claim relying on the rights of those who reside on his land.<sup>3/</sup> Intervention by Hanford Conversion project can not rest on the interests of Mr. Roll,

<sup>1/</sup> The Appeal Board has stated that economic harm can come within the ambit of the NEPA zone of interests but only ... "if it is environmentally related; i.e., if it will or may be occasioned by the impact that the Federal action under consideration would or might have upon the environment." Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977) citing Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 638-640 (1975).

<sup>2/</sup> The Atomic Energy Act is, of course, addressed to, inter alia, the protection of the radiological health and safety of the public. Thus, beyond doubt, the zone of interests created by that Act embraces 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 the result of an accident). And we may also assume, without deciding, that that zone is broad enough to encompass as well as interest in avoiding an economic loss which might be directly tied to the radiological releases (e.g., a loss occasioned by the necessity to cease doing business in the area affected by the releases)." Virginia Electric and Power Company (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 105 (1976).

<sup>3/</sup> "[T]he general rule is that 'a litigant may only assert his own constitutional rights or immunities.'" McGowan v. Maryland, 366 U.S. 420, 429 (1961), quoting United States v. Raines, 362 U.S. 17, 22 (1960). The same rule comes into play where, as here, the right asserted is not of constitutional dimensions. Warth v. Seldin, supra, 422 U.S. at 499-501. It is true, as was pointed out in Warth, that in some instances the courts have found that the constitutional or statutory provision in question implies an entitlement to advance a "claim to relief [which] rests on the legal rights of third parties." Id. at 500-01. But we perceive nothing in the Atomic Energy Act or NEPA which would undergird a conclusion that either or both of those statutes contain such an implication. [footnote omitted]." Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 at 1421 (1977).

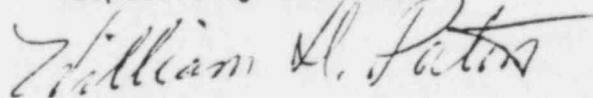
however, because the letter attached to his affidavit shows he was not a member at the time of filing the Petition for leave to Intervene.

Contentions

The Amended Petition includes seven contentions. The Staff has scheduled a meeting with Petitioners between now and the special prehearing conference (now set for January 11, 1979) to discuss these contentions and to attempt to arrive at a stipulation on admissibility in the event Petitioners, or one of them, is admitted as a party. 10 CFR Section 2.714(b) requires that 15 days prior to the holding of the special prehearing conference, Petitioners must file at least one contention that meets the requirements of 10 CFR Section 2.714. On the date of filing this pleading that requirement has not arisen.

The Staff believes the Hanford Conversion Project has met the interest requirements of 10 CFR Section 2.714 based on the demonstrated interest of its member, Ruth C. Long.<sup>1/</sup>

Respectfully submitted,



William D. Paton  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 14th day of December, 1978

<sup>1/</sup> Unless, as suggested above, it develops that Ruth C. Long was not a member of the Hanford Conversion Project on August 28, 1978.



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )

WASHINGTON PUBLIC POWER )  
SUPPLY SYSTEM, et al. )  
(WPPSS Nuclear Project No. 2) )

Docket No. 50-397-OL

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO AMENDED PETITION FOR LEAVE TO INTERVENE", dated December 14, 1978, 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 14th day of December, 1978:

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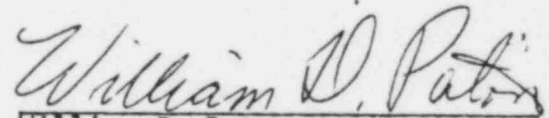
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