

Bd 10/13/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:

Ivan W. Smith, Chairman

Glen O. Bright

Dr. Jerry Harbour

OFFICE OF SECRETARY
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BRANCH

SERVED OCT 14 1982

In the Matter of)
)
WASHINGTON PUBLIC POWER)
SUPPLY SYSTEM)
)
(WPPSS Nuclear Project No. 1)

Docket No. 50-460 OL

ASLBP No. 82-479-06 OL

October 13, 1982

MEMORANDUM AND ORDER

On August 16, 1982, the Nuclear Regulatory Commission published in the Federal Register (47 Fed. Reg. 35567) a notice of the receipt of the application by Washington Public Power Supply System for an operating license for WPPSS Nuclear Project No. 1 at Hanford, Washington. The notice provided the opportunity for interested persons to request a hearing on the application. On September 10, 1982 the Coalition for Safe Power petitioned for a hearing and leave to intervene. The Applicant opposes the Coalition's request. Answer of September 27, 1982. The NRC Staff does not oppose the request providing that the Coalition amend its petition to cure perceived deficiencies. Response of September 30, 1982. This Board has been constituted to rule on the petition. The purpose of

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this order is to begin to establish a record upon which we can rule. The pleadings by the Applicant and the Coalition are inadequate.

At the outset, we bear in mind the Applicant's urging that this Board heed the admonition of the Appeal Board in Cincinnati Gas and Electric Company (Zimmer Power Station), ALAB-305, 3 NRC 8, 12 (1976). There the Appeal Board noted that, in an operating license matter, unlike a mandatory construction permit hearing, a petition could trigger a hearing where one would not otherwise be held. Therefore licensing boards were cautioned that there was an especially strong reason to exercise utmost care in ruling on a petition for a hearing on an operating license application.

However the Applicant's answer to the petition to intervene in this matter has been drafted with insufficient care to permit the Board to give thorough consideration to Applicant's position. We have examined in detail the first twelve pages of Applicant's answer and have concluded that it does not meet the standard of care required in NRC adjudications, and it particularly does not satisfy our present requirements. Therefore we grant leave to Applicant to refile its answer as provided below.

About half of the citations in Applicant's answer do not provide the page number where the cited authorities could be found -- only the opening page numbers were cited. This failure, of course, imposes an unfair task upon the Board and prospective parties to try to locate the authority for the argued position, and leaves the reader uncertain as to whether the authority has ever been located. For example Applicant

cited (at 4) Edlow International Company, CLI-76-6, 3 NRC 563 (1976), but no particular page, for the proposition that "[t]he specific members [of a petitioning organization] must be identified, how their interests may be affected must be shown, and the members' authorization to the organization must be established." After rereading the entire thirty-page Edlow opinion, we cannot identify the justification for Applicant's citation to that case. Even more important, our uncertainty in locating the authorities cited by Applicant has been exacerbated by the fact that many of the citations simply do not, by any fair reading, support Applicant's stated position.

We hope these observations will be perceived to be a constructive effort. We could have disregarded the pleading and ruled on the petition without assistance from the Applicant, but, as we also indicate below with respect to the Petitioner, we wish to hear fully and accurately from all concerned. Moreover, there is a real possibility that the petition will lead to a hearing, and the prospective parties should be aware at the beginning that in any hearing the Board will insist that parties meet the standards of appearance and practice before the Commission in adjudicatory proceedings as required by 10 CFR 2.713. In particular, we notify the prospective parties that either their pleadings meet the standard of care required in a court of law, or they may suffer any appropriate adverse result flowing from inaccurate pleadings.

Turning now to the Coalition's papers, the NRC Staff has pointed to an apparent deficiency in its petition. The Coalition depends "in large part" on the interests of its members, and it reports that at least

one of its members resides within fifty miles of the plant site. Petition at 2nd page. Mr. Rosolie, Director of the Coalition, refers in one of his affidavits to a member who lives as close as twenty miles. However, no member is identified.

In Houston Lighting and Power Company (Allens Creek Unit 1), ALAB-535, 9 NRC 377, 393 (1979), the Appeal Board determined that the parties (and boards) are entitled to be provided with sufficient information to verify for themselves, by independent inquiry, the truthfulness of a petition to intervene, and that, in particular, the disclosure of the name and address of at least one member depended upon for derivative standing should be provided.

We agree with the NRC Staff that the failure to name at least one member with an interest in the proceeding is a possibly curable defect. The Staff, however, would have us withhold approval of the petition until it is amended

to include the requisite affidavit from at least one member who lives within the geographical proximity of the plant, who has an interest that will be affected by operation of the facility and who authorizes Petitioner to represent his or her interests.

Response at 7.

But in Allens Creek, supra, at 396, the Appeal Board addressed this very point and stated:

This does not mean that, in the case of all organizations, there need be supplied a specific representational authorization of a member with personal standing. To the contrary, in some instances the authorization might be presumed. For example, such a presumption could well be appropriate where it appeared that the sole or primary purpose of the petitioner organization was to oppose nuclear power in general or the facility at bar in particular. In such a

situation, it might be reasonably inferred that, by joining the organization, the members were implicitly authorizing it to represent any personal interests which might be affected by the proceeding. [Footnote omitted]

The Coalition states that at least one member residing within a fifty-mile radius has in fact authorized the filing of the petition and request for hearing. Petition at 2nd page. Therefore, whether or not the Coalition wishes to cure the deficiency in its petition by the affidavit of one or more of its members, or by other means, may turn out to be a minor point and we make no ruling or recommendation. However, we caution the Petitioner that the Board and the prospective parties must have enough information filed in this proceeding^{*/} to establish that the Coalition is expressly authorized to represent the interests of at least one member who has standing to intervene or that the Coalition is entitled to the presumption of implicit authorization to represent such a member as set out in Allens Creek, supra, at 396. In either case the name and address of at least one member with standing to intervene must be supplied.

By this action the Board is not stating that the Coalition will necessarily establish standing to intervene by amending its petition in accordance with the cited identification requirements of Allens Creek. As stated above, we have not yet fully evaluated all of the Applicant's

^{*/} We stress that information directed to our attention by the parties must be a part of the record of this proceeding or known to be readily available to the Board and the parties. Both the petitioners and the NRC Staff have referred to pleadings in other proceedings. It is not appropriate for the Board to engage in an independent search of other proceedings.

arguments against the petition. The Coalition is free, of course, to amend its petition in other respects when it refiles in accordance with our direction below.


Several other minor matters warrant comment. We had already noted that the Coalition had failed to provide a current address in its petition, but that information has since been submitted. The petition has no page numbers; therefore references to it are awkward. Mr. Rosolie signed as the director and stated that he is the authorized representative of the Coalition. But Ms. Bell, as Staff Intervenor, answered the Board's letter. Any amendment to the petition should clearly identify all persons with the authority to represent the Coalition so that any may be contacted by the parties and the Board, for example, in telephone conference calls.

We bring to the attention of all prospective parties in this proceeding the need to comply carefully with 10 CFR 2.708 pertaining to the formal requirements for documents filed in NRC adjudicatory proceedings. In addition each pleading should have clearly set out on the face of it the name of the filing party and the date of the document, which date should ordinarily be the service date. The Board has found that it is very helpful also to place this information in short form in the upper right corner of the face page as we have done in this order.

Accordingly, the Coalition is granted leave to amend its petition in accordance with this order within fifteen days following its service.

The Applicant may file its complete answer to both the original and amended petition within ten days following the service of the amended petition. The NRC Staff may file an answer within fifteen days following service of the amended petition. However, if the NRC Staff prefers to rest on its September 30 response or if it intends to file a very short response, we request faster notification or service.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

; Chairman
Ivan W. Smith
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

October 13, 1982