

RELATED CORRESPONDENCE

Hdqtrs. PDR

50-272  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of	)	
	)	
PUBLIC SERVICE ELECTRIC &	)	
GAS COMPANY	)	Docket No. 50-272
	)	Proposed Issuance of Amendment
(Salem Nuclear Generating	)	to Facility Operating License
Station, Unit No. 1)	)	No. DPR-70

11/9/78

MOTION TO CONVENE  
THE BOARD TO RECEIVE PUBLIC TESTIMONY

Alfred and Eleanor Coleman ("the Colemans"), admitted as intervenors by the Atomic Safety and Licensing Board ("Board") by Order of May 24, 1978, and represented by the Public Advocate of the State of New Jersey ("Public Advocate"), hereby move the Board to:

1. Convene a special session of the Board and parties for the purpose of receiving testimony and written statements from all interested members of the public;
2. Provide written notice of the special session to all who request the opportunity to appear and make statements;
3. Schedule the time and location of the hearings so as to assure maximum public convenience and participation (preferably combining a day and evening session at the Cape May County Court House during the first week of December or January); and
4. Direct the parties within thirty (30) days of receipt of the transcript of the special session, or other reasonable time, to inform the Board of any issues or concerns raised at the session which should be admitted as issues in controversy for the presentation of evidence or legal argument.

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In a separate matter, included with this motion for the sole purpose of economy, the intervenor also moves the Board to direct the Secretary and the parties to serve the intervenors' technical consultants with all documents or pleadings filed in this proceedings. Service lists would add the following:

Dale Bridenbaugh  
Gregory Minor  
M.H.B. Technical Associates  
366 California Avenue, Suite 6  
Palo Alto, California 95306

The reasons for the intervenors' motions are as follows:

I. The rules of practice of the Nuclear Regulatory Commission ("Commission" or "NRC") provide for the participation of concerned members of the public in all licensing proceedings. 10 C.F.R. 2.715(a) provides that:

A person who is not a party may, in the discretion of the presiding officer, be permitted to make a limited appearance by making oral or written statement of his position on these issues at any session of the hearing or any prehearing conference within such limits and on such conditions as may be fixed by the presiding officer, but he may not otherwise participate in the proceeding.  
(emphasis added)

This provision of the regulations was recently amended by the Commission with the addition of the underscored phrase, proposed at 42 F.R. 32168 (May 2, 1977), 1 CCH/Nuclear Regulation Reporter 5101, et seq., and adopted on April 26, 1978, effective May 26, 1978, 43 F.R. 17801. Considered in the light of other amendments adopted at the same time, it is evident that the Commission's purpose was to enhance public participation in a pragmatic, no-nonsense manner, likely to produce more informed decision-making and greater public confidence without undue prejudice to parties. For example, 10 C.F.R. 2.715 was further amended to welcome participation by an interested "municipality, and/or agency" in addition to interested states --

all of whom may now participate as fully as parties without the need to comply with the more rigorous tests of formal intervention. See 10 C.F.R. 2.714, generally, as amended.

There are other, equally significant examples of the Commission's program to streamline the complex and often frustrating process of intervention in order to facilitate improved public participation.<sup>1</sup> These include dispensing with the old requirement that petitions to intervene be accompanied by an affidavit under oath attesting to the facts of the petitioner's interest and the basis for the contentions. 10 C.F.R. 2.714(a) as amended 43 F.R. 17801, supra. Additionally, petitioners may intervene as "discretionary intervenors" where, inter alia, they would make a "valuable contribution," In re Portland Gen. El. (Pebble Spring 1 and 2), CLI-76-24, 4 NRC 610, 614-17 (1976), even when they do not meet all applicable requirements of intervention. Now, they may also participate as amicus curiae to advise the Board on all matters at issue. 10 C.F.R. 2.715(d), as amended, supra.

Taken as a whole, it is obvious that these reforms demonstrate a commitment by the Commission to strip the process of costly formalism, remove unjustified barriers to public participation, and thereby, to enhance both the appearance and the reality of accountability. This motion is based upon these principles.<sup>2</sup> It will do so in the following ways:

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<sup>1</sup> See, e.g., H.P. Green, "Public Participation in Nuclear Power Plant Licensing: The Great Delusion," 15 Will. and Mary L. Rev. 503 (1974).

<sup>2</sup> On October 24, 1978, the Commission announced still further initiatives to improve the licensing process. 4 U.S. NRC News Releases 42 (Oct. 24, 1978). In addition to requiring the staff to begin working with applicants several months before formal applications are filed, the Commission "has directed the staff to implement, on all current and future license application reviews, procedures to provide increased opportunity for the public to observe and participate in the licensing process in a meaningful way . . . ."

First, it provides for citizen participation before the Board while the parties are still at the prehearing stage. 10 C.F.R. 2.715(a), supra. This means that concerned members of the public will have some assurance that their efforts can be taken seriously. Once evidentiary hearings have begun -- when issues are hard, discovery complete and consultants wait to testify -- limited appearances are customarily viewed as a futile exercise, full of sound and fury signifying little or nothing. This can be corrected -- to everyone's credit -- by opening the doors to the public at a time when the parties and the Board are still able to respond.

Second, by requiring or permitting parties to respond to limited appearances, it will be clear to all that responsible, well-researched efforts can make a contribution. If no new matter is presented or if arguments beyond the scope of jurisdiction of the proceeding are made, there would be no opportunity for modification of the Board's orders. If, however, new matter is presented then it should be considered for possible motions to add new contentions, subject to all existing criteria, or to add issues on the Board's own motion. The latter, while infrequent, has happened as a result of limited appearances. For example, a former senior engineer from Westinghouse gave limited testimony at the start of hearing on the floating nuclear plants which prompted the board on its own motion to direct staff study and testimony on the matter. In the matter of Offshore Power System, (Floating Nuclear Power Plant), Docket No. STN SO-437, (Tr. 999, June 15, 1976).

By receiving such testimony prior to the start of evidentiary hearings; however, meritorious new matter can be incorporated into the proceeding with no disruption in scheduling.

Moreover, as the Board is well aware, this proceeding has provoked an unusually high degree of public interest. Three state executive departments from two neighboring states, Delaware and New Jersey, have intervened. More importantly, requests for limited appearances have already been received from scores of concerned individuals, political leaders and groups. Clearly, the "public interest" will best be served by providing a convenient forum for their brief participation.

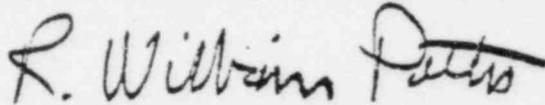
II. With respect to our motion to serve Messrs. Minor and Bridenbaugh, the Public Advocate has been left no choice but to seek the Board's aid. The licensee and the staff have signaled their refusal to cooperate. For no printable reason in the case of PSE&G and for no reason at all from the staff, they refuse to "cc" the intervenor's consultants. (See letters of July 28 from counsel to PSE&G and August 25 from counsel to the staff denying our request.) The Public Advocate is not demanding the production of rare or classified documents, nor do we seek to impose additional burdens of any kind. But failure to cooperate in this simple matter can put the intervenors at a disadvantage. All documents and pleadings must be received by us, screened for relevance to technical matter, photocopied at no little cost, and then mailed to California. At minimum, this costs the intervenors the loss of several days -- a potentially crippling handicap once matters resume in earnest. Consequently, if the instant motion is not granted, the Board should expand the intervenor's time for response to all pleadings, motions and orders by at least an additional ten (10) days. Clearly, the latter is the inferior remedy, which this party does not prefer, but some relief must be granted in the face of the rigidity of the staff and licensee.

CONCLUSION

For the foregoing reasons the Public Advocate of New Jersey, counsel to the Colemans, respectfully requests that the Board order the convening of a public hearing to receive limited appearances, direct the parties to respond to the public testimony, and that the Colemans' consultant be served with pleadings and documents along with all parties to the proceeding.

Respectfully Submitted,

STANLEY C. VAN NESS, PUBLIC ADVOCATE

By:   
R. WILLIAM POTTER, Deputy Director  
Division of Public Interest Advocacy

Date: November 9, 1978

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NUCLEAR REGULATORY COMMISSION

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Docket No. 50-272  
Proposed Issuance of Amendment  
to Facility Operating License  
No. DPR-70

CERTIFICATE OF SERVICE

I hereby certify that copies of "MOTION TO CONVENE THE BOARD TO RECEIVE PUBLIC TESTIMONY" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, this 9th day of November, 1978.

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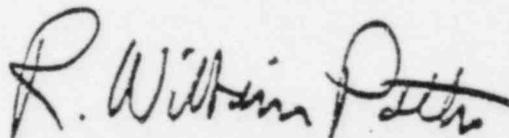
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