

9/30/82

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

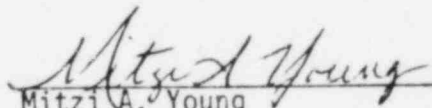
In the Matter of	}	
WASHINGTON PUBLIC POWER SUPPLY SYSTEM		Docket No. 50-460 OL
(WPPSS Nuclear Project No. 1)		

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned proceeding. In accordance with 10 C.F.R. § 2.713(a), the following information is provided:

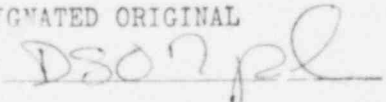
Name	- Mitzi A. Young
Address	- U.S. Nuclear Regulatory Commission Office of the Executive Legal Director Washington, D. C. 20555
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Admission	- District of Columbia Court of Appeals
Name of Party	- NRC Staff

Respectfully submitted,

  
 Mitzi A. Young  
 Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 30th day of September, 1982

DESIGNATED ORIGINAL

Certified By 

9/30/82

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. 50-460 OL
(WPPSS Nuclear Project No. 1)	)	

NRC STAFF RESPONSE TO COALITION FOR SAFE POWER  
REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE

I. INTRODUCTION

Washington Public Power Supply System (WPPSS) is an applicant to possess, use and operate WPPSS Nuclear Projection No. 1 (WNP-1), a pressurized water nuclear reactor located on the Hanford Reservation in Benton County, Washington. On August 16, 1982, pursuant to 10 CFR §§ 2.105(a)(7) and 2.101(d), the NRC published a notice in the Federal Register which acknowledged receipt of the application and offered the opportunity for hearing on such application. 47 Fed. Reg. 35567. The notice established September 15, 1982 as the deadline for filing a request for hearing and petition for leave to intervene.

On September 10, 1982, the Coalition for Safe Power (Petitioner) filed a request for hearing and petition for leave to intervene pursuant to 10 CFR § 2.714 and the Federal Register notice. In that document, Petitioner states that it is a nonprofit organization whose members are concerned about nuclear power safety and licensing and electric utility rates. Petition at 1-2. Petitioner also notes that it has been a party to previous NRC proceedings and that the Staff has twice concluded that

Petitioner meets the standing requirements in its request to intervene on the construction permit extensions of WNP-1 and WNP-2.<sup>1/</sup> The petition also contains a list of "specific aspects" of the operating license proceeding as to which Petitioner wishes to intervene. Petition at 3-5.

For the reasons set forth below, the petition as currently drafted does not satisfy the requirements of 10 CFR § 2.714. However, the Staff does not object to admitting Petitioner as a party to the proceeding provided it amends its petition and submits a contention in conformance with NRC regulations.

## II. DISCUSSION

### 1. Interest and Standing

Section 189a of the Atomic Energy Act, 42 U.S.C. § 2239(a) provides that:

In any proceeding under [the] Act, for the granting, suspending, revoking, or amending of any license or construction permit...the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Section 2.714(a) of the Commission's Rules of Practice also provides that "[a]ny person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition for

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<sup>1/</sup> With respect to both the WNP-1 and WNP-2 petitioners, the Staff concluded that Petitioner had sufficiently identified at least one member who had standing based on geographical proximity and who apparently authorized Petitioner to represent his interests. See Staff Responses to Coalition for Safe Power Request for Hearing regarding WNP-1 and WNP-2, dated April 7 and March 15, 1982, respectively. The present petition fails to show that the Petitioner has standing as an organization based on the interests of its members who have standing in their own right. See pages 3-7 infra.

leave to intervene." Thus the pertinent inquiry under Section 189a of the Act and 10 CFR § 2.714(a) of the regulations is whether Petitioner has alleged an interest which may be affected by the operating license proceeding. The Commission has held that contemporaneous judicial concepts of standing are controlling in the determination of whether the requisite interest prescribed by both Section 189a of the Atomic Energy Act and Section 2.714 of the NRC's Rules of Practice is present. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). There must be a showing that (1) the action being challenged could cause "injury-in-fact" to the person seeking to intervene and that (2) such injury is arguably within the "zone of interests" protected by the Atomic Energy Act or the National Environmental Policy Act.<sup>2/</sup> Id. See Warth v. Seidman, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972). Thus, a petitioner must "set forth with particularity" its interest in the proceeding and how that interest may be affected by the outcome of the proceeding. 10 CFR § 2.714(a)(2).

a. Rules of General Applicability to Organizations

An organization may establish standing based upon an injury to itself or through members of the organization who have interests which may be affected by the outcome of the proceeding. Edlow International Co., CLI-76-6, 3 NRC 563, 572-74 (1976); Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322,

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<sup>2/</sup> 42 U.S.C. § 4321 et seq.

3 NRC 328, 330 (1976).<sup>3/</sup> When an organization claims standing based on the interests of its members, at least one of its members must have standing in his or her own right, the organization must identify (by name and address) specific individual members whose interests may be affected, and the organization must demonstrate that such members have authorized the organization to represent their interests in the proceeding.

Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-97 (1979); Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 488-89 (1973). Absent express authorization, groups may not represent other than their own members, and individuals may not assert the interests of other persons. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418 (1977).

Generally, the close proximity of a petitioner's residence is presumed sufficient to satisfy the interest requirements of 10 CFR § 2.714. Armed Forces Radiobiology Research Institute (Cobalt-60 Storage Facility), ALAB-682, 16 NRC \_\_\_\_, slip op. at 6-7 (July 16, 1982)(hereafter "AFRRI"); Allens Creek, 9 NRC at 393, citing, Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).<sup>4/</sup> Nevertheless, since there is no presumption

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<sup>3/</sup> A petitioner must particularize a specific injury that it or its members would or might sustain should it be denied relief. The test is whether a "cognizable interest of the petitioner might be adversely affected if the proceeding has one outcome or another." Marble Hill, CLI-80-10, 11 NRC 436, 439 (1980).

<sup>4/</sup> In the past, residential distances of up to 50 miles have been found to be not so great as to necessarily preclude a finding of standing in licensing proceedings. See e.g., Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 at n.4 (1977); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-496, 8 NRC 308 (1978) (40 miles); North Anna, ALAB-416, 6 AEC 631, 633-34 (1973) (residency within 30-40 miles sufficient to show interest in raising safety questions).

that every individual who lives near the plant will consider himself potentially harmed by the outcome of a proceeding, it is important that the nature of the invasion of an individual's personal interest be identified. Allens Creek, 9 NRC at 383. Accordingly, it has been found that persons who live near the site have standing to intervene if they allege a potential for injury from operation of the facility. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), LBP-80-22, 12 NRC 191, 195-96 (1980), affirmed, ALAB-619, 12 NRC 558, 564-65 (1980).

b. Interest and Standing of Petitioner in This Proceeding

Petition asserts it has standing based, "in large part," upon its members which may be impacted by the operation of WNP-1. Petition at 2-3. Petitioner alleges that: (1) at least one member resides within 50 miles of the plant; (2) its members live, work, recreate, and travel in the "environs" of WNP-1 and the Columbia River; (3) its members eat foodstuffs grown and produced in the vicinity of WNP-1 which would be affected by routine and accidental releases of low-level radiation from the plant; and (4) its members are rate payers of WPPSS facilities. Petition at 2-3. Attached to the petition are two affidavits executed by Eugene Rosolie, Director of Petitioner organization. The first affidavit attests that statements in the petition are truthful and the second states that Petitioner's members live within a 50 mile radius of the plant, and as close as 20 miles.

The present petition is deficient because the Petitioner has not sufficiently demonstrated it has standing to intervene as an organization based on the interest of its members. In contrast to its request for hearing on the WNP-1 construction permit extension, Petitioner has not sufficiently identified at least one member of its organization (by name and address)

who has standing and has authorized Petitioner to represent its interest.<sup>5/</sup> Because proximity to a large source of radiation can establish a petitioner's interest, AFRRI, supra at 7, Petitioner must sufficiently identify at least one member that resides near the plant to satisfy the standing and interest requirement of 10 CFR § 2.714.<sup>6/</sup>

Petitioner's failure to adequately identify at least one member who lives near the plant, however, does not defeat the grant of intervenor status to Petitioner. Under 10 CFR § 2.714(a)(3), a petition for leave to intervene may be amended, without prior approval of the presiding officer, at any time up to fifteen days prior to a special prehearing conference held pursuant to 10 CFR § 2.751a or, if no special prehearing conference is held, fifteen days before the first prehearing conference. The Appeal Board has stated that petitions that suffer from inarticulate draftsmanship or procedural or pleading defects may be amended if they contain curable defects. North Anna, ALAB-146, 6 AEC 631, 633-34 (1973). See Wisconsin Public Service Corp. (Kewaunee Nuclear Plant), LBP-78-24, 8

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<sup>5/</sup> Attached to Petitioner's March 8, 1982 request for hearing on the construction permit extension was an affidavit of a member who was identified by name and address, lived within 20 miles of the plant and authorized Petitioner to represent its interests.

<sup>6/</sup> With respect to the other interests identified in the petition, the Staff notes that general assertions that a petitioner's members live and recreate near a facility or eat foodstuffs grown near the plant are not sufficiently particularized to support a finding of standing. See Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1150 (1977); Mississippi Power & Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 425 (1973). In addition, the economic interest of a ratepayer asserted by Petitioner is not within the "zone of interests" protected by the Atomic Energy Act and does not confer standing to intervene. Pebble Springs, 4 NRC at 614; Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 475 (1978); ALAB-582, 11 NRC 239, 242 (1980).

NRC 78, 82 (1978). Yet a totally defective pleading may not be justified on the basis that it was prepared without the assistance of counsel. Allens Creek, ALAB-590, 11 NRC 542, F46 (1980). Since Section 2.714(a)(3) does not limit the reasons for amendment, and assuming the defect is curable, Petitioner could amend its petition to include a member affidavit which would satisfy the standing requirement. See e.g., Enrico Fermi, LBP-79-1, 9 NRC 73, 77 (1979). The NRC Staff does not object to the present petition on the grounds that Petitioner lacks standing, provided it amends its petition 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.

2. Specific Aspects of the Subject Matter of an Operating License Proceeding

In addition to satisfying the standing and interest requirements of 10 CFR § 2.714, a petitioner must "also set forth with particularity...the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene." 10 CFR § 2.714(a)(2).<sup>7/</sup>

Petitioner lists 22 "specific aspects" (labelled A through V) of an operating license proceeding which it seeks to litigate.<sup>8/</sup> A number of

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<sup>7/</sup> An "aspect" is generally considered to be broader than a "contention," but, narrower than a general reference to the NRC's operating statutes. Consumers Power Co. (Midland Plants, Units 1 and 2), LBP-78-27, 8 NRC 275, 278 (1978).

<sup>8/</sup> The 22 aspects listed on pages 3-5 of the petition are:

There exists no reasonable assurance that:

- A. Construction will have been in accordance with the rules and regulations of the Commission;

Footnote continued on next page



the aspects, although broad in scope, fall within the findings required for the issuance of an operating license under 10 CFR § 50.57 (e.g., aspects A, D, and F-H). Other aspects are vague (e.g., E, M and N) and duplicative. Aspect C is not appropriate for consideration in an operating license proceeding, but may be relevant in any eventual construction permit extension proceeding or a state rate proceeding.

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8/ (CONTINUATION FROM PREVIOUS PAGE)

- B. The project will be completed within the guidelines of the construction permit;
- C. The project will be completed;
- D. That the Permittee possesses the technical ability to operate the project in accord with the rules and regulations of the Commission;
- E. That the geology of the site has been properly assessed and taken into consideration in the engineering of the project;
- F. That operation of the project will not endanger the public health and safety;
- G. That operation of the project will not be inimicable to the common defense and security of the public;
- H. That emergency response plans for the project are sufficient;
- I. That the production, on-site storage and disposal of nuclear wastes from the project will not endanger the public health and safety;
- J. That the Somatic and Genetic impact of radiation release from the project will not endanger the public health and safety;
- K. That the Architect/Engineer has the technical ability to complete construction of the project in a safe manner;
- L. That the Permittee and Architect/Engineer possess the ability to conform to NRC approved QA/AC procedures for construction and operation;
- M. That operation of the project will not endanger other nuclear facilities located at the Hanford Nuclear Reservation;

Footnote continued on next page

In the opinion of the Staff, Petitioner has identified aspects which are within the scope of an operating license proceeding and are sufficient to put the parties on notice with respect to contentions it may draft. Consequently, the Staff is of the view that Petitioner has satisfied the aspects requirements of 10 CFR § 2.714.

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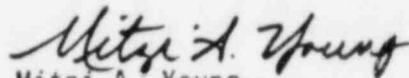
8/ (CONTINUATION FROM PREVIOUS PAGE)

- N. That operation of other nuclear facilities will not endanger operation of the project;
- O. That the Permittee has the ability to comply with safety requirements of TMI;
- P. That operation of the project will be in accordance with NRC rules and regulations;
- Q. [That] the design of the decay heat removal system is adequate for accident and normal transient conditions;
- R. [That] the safety-related electrical and mechanical equipment will be environmental qualified;
- S. That the actions specified in NUREG-0737 and NUREG-0660 are an adequate response to the safety deficiencies of the B & W design which were disclosed by the TMI-2 accident;
- T. That failures in the nuclear safety grade systems will not create a situation beyond the ability of safety systems and will not disable safety systems;
- U. That the systems interaction evaluation is adequate;
- V. That the nuclear steam supplier will not have supplied a system which will operate in accordance with NRC rules and regulations.

III. CONCLUSION

The Staff does not object to the Board granting intervention to Petitioner provided Petitioner amends its petition, as described above, and submits contentions in accordance with NRC regulations.

Respectfully submitted,

  
Mitzi A. Young  
Counsel for NRC Staff

Dated at Bethesda, Maryland  
this 30th day of September, 1982

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

Docket No. 50-460 OL

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO COALITION FOR SAFE POWER REQUEST FOR HEARING AND PETITION FOR LEAVE TO INTERVENE" and "NOTICE OF APPEARANCE" 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, by deposit in the Nuclear Regulatory Commission's internal mail system, this 30th day of September, 1982:

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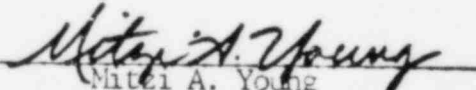
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