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Applicant ³² NO 118 7 182 07

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

Applicant's Amended Answer In
Opposition To Amended Request For Hearing
And Petition For Leave to Intervene

I. Background

On August 16, 1982, the Nuclear Regulatory Commission published a Notice of Opportunity for hearing in the captioned matter (47 Fed. Reg. 35567 (1982)). In response thereto, a "Request for Hearing and Petition for Leave to Intervene ("petition") dated September 10, 1982 was filed by the Coalition for Safe Power ("petitioner"). It recited petitioner's purported interests and the alleged effect on those interests of the proposed operation of WPPSS Nuclear Project No. 1 ("WNP-1") by the Washington Public Power Supply System ("Applicant"). The Applicant opposed the petition, claiming that it failed to establish a clear legal interest in the proceeding upon which

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standing could be conferred and that it did not demonstrate how any interest alleged will be affected by the outcome of the proceeding, as required by 10 C.F.R.

§2.714. The NRC Staff did not oppose the petition provided that it was amended to cure various deficiencies.

By Memorandum and Order dated October 13, 1982,¹ the Atomic Safety and Licensing Board ("Board") found that the petition was defective. Accordingly, it granted leave for petitioner to submit an amended pleading. It additionally ruled that the Applicant would have the opportunity to amend its Answer in opposition to the petition.

On November 2, 1982 Applicant was served with the "Coalition for Safe Power Amendment to Request for Hearing and Petition for Leave to Intervene" ("amended petition"). Attached to the amended petition was an affidavit of Larry L. Caldwell ("Caldwell Affidavit"). The Caldwell Affidavit was submitted "to satisfy the identification requirements established in Houston Lighting and Power Company, . . . cited in the Board's Order."²

¹ Washington Public Power Supply System (WPPSS Nuclear Project No. 1), ASLBP No. 82-479-06 OL, 15 NRC ____ (October 13, 1982) ("Memorandum and Order").

² Amended petition at 1.

II. Argument

As the Board recognized, when ruling on a petition for a hearing on an operating license application, licensing boards have "an especially strong reason to exercise utmost care"³ lest such a petition trigger a hearing where one might not otherwise be required.⁴ Applicant maintains that because the amended petition does not cure the deficiencies present in the original pleading, petitioner has again failed to demonstrate sufficient interest in support of its intervention as a matter of right. Further, Applicant maintains that the amended petition fails to establish any basis for the Board to grant discretionary intervention. Applicant therefore opposes the amended petition.

A. Petitioner Has Failed To Establish A Clear Legal Interest In This Proceeding

As was discussed in "Applicant's Answer In Opposition To Request For Hearing And Petition For Leave To Intervene," dated September 27, 1982 ("Applicant's Answer"), the Commission's decision in Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976), and subsequent decisions of the Atomic

³ Memorandum and Order, slip op. at 2.

⁴ Cincinnati Gas & Electric Co., et al. (Zimmer Nuclear Power Station), ALAB-305, 3 NRC 8, 12 (1976), citing Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 226 n. 10 (1974).

Safety and Licensing Appeal Board⁵ clearly establish that a petitioner for intervention of right must assert an "interest which may be affected" by the proceeding. Applying contemporaneous judicial concepts of standing,⁶ the Commission in Pebble Springs interpreted this "interest" requirement as mandating the allegation of facts which support findings of both (1) some injury in fact which has occurred or will probably result from the action involved, and (2) an interest "arguably within the zone of interests" to be protected or regulated by the statute sought to be invoked.⁷

In addition, as Applicant's Answer discussed, an organization wishing to intervene in an operating license proceeding as the representative of its members must establish that at least one of its members has standing on

⁵ E.g., Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 475-76 (1978) (petitioner lacked standing because economic concerns are beyond "zone of interests" of Atomic Energy Act or National Environmental Policy Act); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420-23 (1977) (same); Public Service of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1147 (1977) (same).

⁶ E.g., Warth v. Seldin, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972); Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970).

⁷ Pebble Springs, supra, CLI-76-27, 4 NRC at 613-14.

his own right.⁸ The specific members must be identified,⁹ how their interests may be affected must be shown,¹⁰ and the members' authorization to the organization to intervene must be established.¹¹ Following this mandate, the cases are clear that the individual member from whom organizational standing is derived must, in some manner (e.g., affidavit), state his concerns and interest in

⁸ Edlow International Company (Agent for the Government of India on Application to Export Special Nuclear Material), CLI-76-6, 3 NRC 563, 574-78 (1976) (organization asserting interests of members to establish standing failed to show how interests were such to afford members standing); see also Simon v. Eastern Kentucky Welfare Rights Organization, 426 U.S. 26, 40 (1976), and Warth v. Seldin, supra, 422 U.S. at 511.

⁹ Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-79-1, 9 NRC 73, 77 (1979) (organization demonstrating standing on the basis of its members' interests "must identify specifically the name and address of at least one affected member who wishes to be represented by the organization").

¹⁰ Edlow International Company, supra, CLI-76-6, 3 NRC at 574-78; Allied General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), LBP-76-12, 3 NRC 277, 281-87 (1976) (where organization claimed to be protecting members' civil rights and property, "interests" cited to establish standing were speculative and thus petition to intervene was denied).

¹¹ Houston Lighting & Power Co. (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 395-97 (1979) ("[w]here an organization's standing hinges upon its being the representative of a member" who has standing in his own right, authorization of member permitting organization to represent his interests is required unless authorization may be presumed from membership).

detail sufficient to establish individual standing.¹²
Thus, the question of petitioner's standing must be resolved on the demonstration of interest by the individuals whom the petitioner asserts are its members.¹³

Applicant submits that petitioner fails to satisfy these requirements. First, because the Caldwell Affidavit does not establish that petitioner was authorized by that member on or before the September 15 deadline to file the unamended petition to intervene, the amended petition should be treated as non-timely and the standards of 10 C.F.R. §2.714(a)(1)(i)-(v) applied. Applicant submits that application of those standards will lead to the rejection of the amended petition. Second, to the extent petitioner recites interests other than those of Mr. Caldwell, those interests are speculative and do not provide a basis for admitting petitioners to this proceeding.

¹² Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC 402, 404 (1979) (standing not established when petitioner organization failed to particularize how the interests of a member might be adversely affected by outcome of proceeding); Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station), LBP-82-4, 15 NRC 199, 205 (1982) ("when an organization claims that its standing is based on the interests of its members, the organization must identify specific individual members whose interest might be affected . . . , describe how the interests of each of those members might be affected and show that each of those members has authorized the organization to act on his behalf").

¹³ Sierra Club v. Morton, *supra*, 405 U.S. at 740 ("a party seeking review must allege facts showing that he is himself . . . affected").

The Caldwell Affidavit. Recognizing that petitioner failed with its first pleading to meet the requirements set forth above, the Board provided the opportunity for petitioner to amend its pleading. The major deficiency noted by the Board was the failure of petitioner to "name at least one member with an interest in the proceeding."¹⁴ It stated in this regard that such deficiency could be cured either by submitting the affidavit of a member authorizing petitioner to represent his interests or by showing that "the sole or primary purpose of the petitioner organization was to oppose nuclear power in general or the facility at bar in particular."¹⁵ In the latter case, the authorization missing in the petition could possibly be presumed.¹⁶

Petitioner apparently has chosen the former means to attempt to correct the deficiencies in its first pleading.¹⁷ However, the affidavit executed by Mr. Caldwell

¹⁴ Memorandum and Order at 4.

¹⁵ Allens Creek, Unit 1, supra, ALAB-535, 9 NRC at 396.

¹⁶ Memorandum and Order at 4-5.

¹⁷ Applicant notes that in any event, petitioner has provided no basis in its pleadings for concluding that it falls within the class of organizations in which membership can be presumed to indicate total opposition either to nuclear power in general or to WNP-1 in particular. Indeed, it stated in its petition that it was founded to "work for safe energy" and that it has represented its members "before the Commission as well as state agencies, on questions of nuclear power safety and licensing, and on electrical utility rates." Peti-

(footnote continued)

and submitted with the amended petition does not cure the original petition. The Caldwell Affidavit was executed on October 11, 1982, several weeks after the September 15, 1982 deadline for filing petitions to intervene¹⁸ but two days before the Board issued its Memorandum and Order. However, the affidavit does not state when Mr. Caldwell joined the petitioner. Thus, while petitioner apparently was aware of the defect in its original pleading (an inference which seems even stronger in light of the petitioner's participation in other NRC proceedings¹⁹), it took until October 11 for petitioner to secure the necessary written authorization of one of its members. As a result, there is simply no basis in the record to conclude through independent analysis of both petitions that as of the September 15 deadline, petitioner satisfied NRC

(footnote continued from previous page)

tion at ¶3 (emphasis added). Thus, while membership in the petitioner may signify opposition to nuclear power, it may also signify an opposition to high electric utility rates, regardless of the type of power generation facility used by a particular electric utility. Therefore, Applicant submits that the only way the major defect in the petition identified by the Board may be cured is through submittal of an affidavit from one of petitioner's members specifically authorizing it to represent the interests of that member. Compare with petitioner's pleading Consolidated Edison Company of New York (Indian Point, Unit No. 2), LBP-82-25, 15 NRC 715, 735 (1982) (organization not required to produce affidavit from member authorizing intervention).

¹⁸ 47 Fed. Reg. 35567, 35568 (1982).

¹⁹ See ¶9 of the petition, which recites previous experience in other NRC licensing proceedings.

requirements governing intervention as a matter of right. Applicant accordingly submits that, absent facts in the record to the contrary, the Board should assume Mr. Caldwell became a member of petitioner when he executed the October 11, 1982 affidavit, and that petitioner did not have the authorization of a member (Mr. Caldwell) by the September deadline. Applicant further submits that the Board should treat the petition as filed out of time and require petitioner to meet the requirements of late filing set forth in §2.714(a)(1)(i)-(v).

The Board should adopt this approach for two reasons. First, to the extent 10 C.F.R. §2.714 (a)(3) and (b) permit the petitioner to amend its deficient pleading, such amendments are limited to particularizing the basis for its standing and not to establishing standing in the first instance.

[Section 2.714(a)(3) and (b) are] not an open invitation for an organization whose membership is far removed from the facility and who claimed to have membership in the vicinity of the site to later recruit individuals in the vicinity as members and gain a retroactive recognition of interest.²⁰

Moreover, the purpose of requiring interested persons to file petitions to intervene in this operating license proceeding by September 15, 1982 was to permit the timely

²⁰ Washington Public Power Supply System (WPPSS Nuclear Project No. 2) ("WNP-2"), 9 NRC 330, 336 (1979). As in the case at bar, the intervenor in the cited case was from Portland, Oregon.

identification of those whose interests may be affected by the proceeding. This purpose is undercut if an organizational petitioner previously without interested members in the vicinity of WNP-1 can rely on members acquired after September 15, 1982 to establish its own standing retroactively (and thereby circumvent the September 15 deadline). Moreover, to permit an organization to use an after-acquired member to retroactively establish standing would lead to anomalous results, viz., while the organization could intervene "out-of-time" as a matter of right on the basis of a newly acquired member, if that same individual attempted to establish standing on his own after the filing deadline, he clearly would have to satisfy the more stringent standards of 10 C.F.R. §2.714(a)(1)(i)-(v).

There is another reason for the Board to adopt this approach. On the one hand, petitioner has made much of its expertise both in terms of the hearing process and substantive areas of NRC regulation.²¹ Presumably such expertise includes a working knowledge of what must be shown to establish standing. Yet, on the other hand petitioner has failed to provide a factual predicate upon which the Board could base a finding that, as of September 15, a named member of petitioner with an interest affected by the proceeding had authorized it to intervene in this

²¹ See note 19, supra.

proceeding to protect those interests. Absent such basis, the Board should take petitioner's pleadings at face value and presume that Mr. Caldwell joined the petitioner on October 11.

This approach is consistent with an earlier decision of a licensing board faced with a similar situation. In WNP-2, supra, an organization based in Portland, Oregon filed a petition to intervene in the WNP-2 operating license proceeding. The first petition to intervene, though timely, did not disclose an interest of the potential intervenor sufficient to establish standing, in large measure because it failed to identify any members of the organization living within a fifty mile radius of the plant which authorized the organization to represent them. The Board permitted the organization to amend its petition, which it did by adding the names of two individuals who either owned land or lived within that radius of WNP-2. During the prehearing conference, it was established that these individuals joined the Oregon group only after the period in which petitions to intervene were established. Consequently, the Board found that the individuals were "out-of-time" petitioners and that the requirements of §2.714(a)(1)(i)-(v) had to be satisfied. The Board then held that to the extent one of the individuals may have had an interest affected by the proceeding, that individual (and therefore the organization) failed to meet

any of the criteria in §2.714(a)(1) which warranted accepting a late petition. On this basis, the Board denied the organization's petition to intervene.²²

Applying the teachings of WNP-2 to this proceeding confirms that the petitioner still has not satisfied, on the record, the requirements governing intervention in NRC operating license proceedings. For the reasons set forth above, petitioner must demonstrate that, balancing the factors set forth in §2.714(a)(1)(i)-(v), it should be permitted to intervene in this proceeding. Manifestly, it has failed to do so.

Moreover, any reasonable application of those factors leads to the conclusion that petitioner should not be permitted to intervene in this proceeding. First, there is no good cause for the apparent failure to submit a

²² WNP-2, supra, LBP-79-7, 9 NRC at 335-38. No appeal from the Licensing Board's Order was taken. Washington Public Power Supply System (Nuclear Project No. 2), ALAB-571, 10 NRC 687 (1979). In Houston Lighting & Power Co. (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 648-50 (1979), the Appeal Board noted the WNP-2 decision but did not evaluate the legal merits of the theory used by the Licensing Board in that decision. However, in Allens Creek, supra, ALAB-535, 9 NRC at 399 n. 30, the Appeal Board did observe "that the names [of group members] serve a useful purpose is borne out by the recent licensing board decision in [WNP-2]" See also Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 (1979) ("If newly acquired standing (or organizational existence) were sufficient of itself to justify permitting belated intervention, the necessary consequence would be that parties to the proceeding would never be determined with certainty until the final curtain fell").

completed petition on time. Certainly an organization purportedly familiar with the licensing process should have been aware of its duty to establish standing from the outset of this operating license proceeding. Further, a member of that organization willing to permit the petitioner to invoke his interests to trigger a lengthy hearing on the WNP-1 operating license presumably would also have enough interest in the operation of WNP-1 to notice and act in a timely manner on the Federal Register and several press releases issued by NRC advising the interested public of its opportunity to request a hearing.²³ Accordingly, the good cause factor weighs heavily against intervention.

Second, to the extent petitioner's overriding interest in this proceeding is the protection of public health and safety, no basis has been given to conclude that the NRC Staff will be unable to protect such interest and that as a result there are no means other than intervention to protect such an interest. Further, to the extent petitioner's interest is economic, such interest is not protected by the Atomic Energy Act or the National Environmental Policy Act ("NEPA") and does not warrant

²³ See Consolidated Edison Company (Indian Point Station, Unit 2), LBP-82-1, 15 NRC 37, 40 (1982) ("failure to spot the Federal Register notice in question does not constitute good cause for [untimely request to intervene]").

participation in an operating license hearing.²⁴ Lastly, to the extent petitioner may have other interests in mind, it has yet to articulate them. This is not to say that petitioner is without a vehicle to advocate its position in the absence of an OL hearing. Petitioner may express itself fully and frankly in commenting on the Draft Environmental Impact Statement and the Safety Evaluation Report to be prepared by the NRC Staff, and may otherwise raise matters of concern with the Commission. See 10 C.F.R. §§2.206, 51.22 et seq. Thus, given the present state of the record, there are other means available whereby petitioner's legitimate interests within the scope of the Atomic Energy Act and NEPA will be protected. Consequently, this factor also weighs heavily against intervention.

The third factor to be considered is the extent to which petitioner's participation may reasonably be expected to assist in developing a sound record. Nothing in petitioner's pleadings provides any basis for concluding that petitioner has any special expertise which will be of help in developing a sound record. Indeed, a review of its petition suggests just the opposite. In that pleading petitioner identified 22 "specific aspects of the subject matter" as to which it seeks to intervene. However, most of these aspects are nothing more than general assertions.

²⁴ See note 35, infra.

Petitioner claims, for example, that "there exists no reasonable assurance" that "construction will have been in accordance with the rules and regulations of the Commission" or "that operation of the project will not endanger the public health and safety."²⁵ It is hard to imagine more vague and general suppositions than these statements. Yet petitioner claims them as examples of "specific aspects" it would like to pursue. Accordingly, the third factor weighs against petitioner intervening in this proceeding.

The fourth factor to be considered is the extent to which petitioner's interest will be represented by existing parties. As discussed above, no basis exists for concluding that petitioner's legitimate interests protected by the Atomic Energy Act and NEPA, viz., public health, safety and the environment, will not be adequately represented by the NRC Staff. This factor also weighs against intervention.

The last factor to be considered is the extent to which petitioner's participation will broaden the issues or delay the proceeding. Clearly petitioner's participation will broaden the licensing process. This petition is the only one filed in response to NRC's notice of opportunity to intervene. Thus, if the petition is denied the WNP-1 operating license will be uncontested and the

²⁵ Petition at ¶8.

resources of both the NRC Staff and the Applicant (and public) can be concentrated on completing construction and continuing facility review. Therefore this factor weighs heavily against intervention.

At bottom, the amended petition and accompanying Caldwell Affidavit do not cure the original pleading submitted to establish standing as a matter of right. Rather, they suggest that the amended petition should be treated as one filed beyond the September 15 deadline and rejected as a result of petitioner's failure to satisfy §2.714(a)(1)(i)-(v).

Other Interests. In addition to the Caldwell Affidavit, petitioner relies upon a number of other interests in hopes of establishing standing. These interests, however, are too remote and speculative to provide a basis upon which to confer standing.

First, petitioner alleges that it "has members residing throughout Oregon and Washington" who authorized filing the petition to intervene.²⁶ Simply stated, an allegation that the petitioner has members living throughout Oregon and Washington does not in itself confer standing on that organization. Such a broad area clearly is not within the geographical zone which might be affected by operation of WNP-1. It is also beyond the distance recognized by the NRC in the past to be sufficiently

²⁶ Petition at ¶5.

close to vest an interest (if otherwise well pled) in the proceeding.²⁷ As to these members, "prima facie, there would appear to be no reasonable chance of [their] being at all adversely affected by either normal operation or a credible accident."²⁸ Accordingly, petitioner is not vested with standing on the basis of members generally alleged to be living throughout Washington and Oregon.

Second, petitioner seeks to establish standing as a matter of right in this proceeding by alleging that its members work, live, recreate and travel near WNP-1 and eat foodstuffs grown in the vicinity potentially impacted upon by the operation of the project. Again, this claim is insufficient to establish standing. Recreational activities in an area may provide the legal interest needed to confer standing only if the area is in close proximity to a plant site and the recreational activities are stated with specificity and are substantial in nature.²⁹ Evaluating

²⁷ E.g., Portland General Electric Co. (Trojan Nuclear Plant), ALAB-496, 8 NRC 308, 309 (1978) (40 miles); River Bend, supra, ALAB-183, 7 AEC at 223 (25 miles); Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 632-34 (1973) (16 air miles); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 190 (1973) (30-40 miles).

²⁸ River Bend, supra, ALAB-183, 7 AEC at 226.

²⁹ Compare petitioner's pleading with Mississippi Power and Light Co. (Grand Gulf Nuclear Station, Units 1 and 2), ALAB-130, 6 AEC 423, 425 (1973) (in view of all representations made by potential intervenor concerning recreational uses of area in proximity to plant, sufficient interest was shown to establish standing).

the petition to intervene against this guidance, it is clear that petitioner has failed to demonstrate substantial recreational use of the area around the site.

Petitioner's other general assertion in this regard is that its members consume food grown or produced in areas that would be affected by plant operations. This also is too speculative and lacking in specificity to establish legal interest to support the petition to intervene. To confer standing on a petitioner residing outside the relevant geographical zone based on an assertion that some food consumed by the petitioner (or its members) may have been grown near the site would emasculate judicial concepts of standing as well as the interest requirements of the Atomic Energy Act and the Commission's Rules of Practice. As noted in Applicant's Answer to the original petition, the logical extension of such a proposition would be that an individual living in Washington, D.C. who consumed California oranges could be awarded standing in a proceeding relating to a nuclear facility in California. Certainly Congress did not intend and has not sanctioned such an interpretation of the Atomic Energy Act, and the Commission and the courts certainly have not judicially construed the Act in such manner.³⁰

³⁰ Applicant notes that to the extent the Caldwell Affidavit references these other interests discussed above, it does not change the fact that the amended petition should be treated as non-timely and subject to Section
(footnote continued)

Accordingly, Applicant submits that petitioner has failed to establish a clear interest in this proceeding such that the Board should grant its untimely petition.

B. The Petitioner Has Failed to Establish How Its Interests May be Affected by the Outcome of This Proceeding

Section 2.714(a)(2) requires that the petitioner seeking intervenor status set forth how its interest may be affected by the outcome of the proceeding in which petitioner wishes to intervene. In the case of an organization seeking standing through one of its members, the organization must show how the interest of that member will be affected by the outcome of the proceeding.³¹ Because petitioner has failed to satisfy this requirement, its request to intervene should be denied.

First, it is clear that Section 189 of the Atomic Energy Act "does not confer the automatic right of intervention on anyone."³² It is also clear that mere proximity of residence to a power reactor alone is not sufficient to confer standing. The petition must also

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2.714(a)(1)(i)-(v). Nor does a recitation of these interests change the application of Section 2.714(a)(1)(i)-(v) as discussed at 12-16 of this Amended Answer.

³¹ Allens Creek, supra, ALAB-535, 9 NRC at 393; Maine Yankee, supra, LBP-82-4, 15 NRC at 205; Accord, North Anna Nuclear Power Station, supra, ALAB-536, 9 NRC at 404.

³² BPI v. Atomic Energy Commission, 502 F.2d 424, 428 (D.C. Cir. 1974).

explicitly identify "the nature of the invasion of [their] personal interest which might flow from the proposed licensing action."³³ Petitioner has failed to do so.

To the extent that petitioner relies on the Caldwell Affidavit, that affidavit does not itself establish an affected interest sufficient to confer standing as a matter of right because of petitioner's failure to satisfy the September 15, 1982 deadline, as discussed above. Moreover, petitioner has not demonstrated how the interests of its other members living throughout Washington and Oregon will be affected by the outcome of the proceeding. As discussed above, these members live well beyond the geographical area generally recognized as being affected by operation of WNP-1³⁴ and thus by definition have no interest which may be affected by this proceeding. Petitioner has provided no factual basis for reaching any contrary conclusion or for abandoning what have become well-established rules (set forth earlier) used to evaluate whether §2.714(a)(2) is satisfied.³⁵

³³ Allens Creek, supra, ALAB-535, 9 NRC at 393.

³⁴ See note, 27 supra, and accompanying text.

³⁵ Petitioner asserts that several adverse economic conditions may result if WNP-1 is licensed to operate and that they will affect the interests of its members. First, petitioner claims at ¶6 of its pleading that "insurance would not adequately cover losses sustained by the members of the Coalition in case of an accident." This apparently is a challenge to the limitation of liability provisions of the Price-Anderson Act, (footnote continued)

Accordingly, given petitioner's failure to establish that before September 15 a named member with the requisite interest authorized it to file its petition on his or her behalf, it appears as if petitioner (based several hundred miles away from WNP-1 and in a different state) is intent

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42 U.S.C. §2210, and the Commission's regulations implementing that Act. This tack cannot confer standing on the petitioner. In Florida Power & Light Co. (Turkey Point Units Nos. 3 and 4), Memorandum and Order, 4 AEC 787, 788 (1972), the Commission held that a licensing proceeding is not the proper forum for an attack on the Price-Anderson Act. Further, a challenge to the Commission's Price-Anderson regulations is proscribed in NRC adjudicatory proceedings by 10 CFR §2.758. Moreover, the Supreme Court affirmed the constitutionality and reasonableness of that Act on June 26, 1978. Duke Power Co. v. CESC, 438 U.S. 59 (1978). Thus, petitioner's challenge is unsupported and invalid as a matter of law, and can lend no support to its attempt to demonstrate "interest" in this proceeding.

Second, ¶6 of the petition states that "the proposed plants will place and [sic] excessive economic burden on members who are ratepayers of permittee utilities." However, it is well established that the economic interest of a ratepayer is not sufficient to allow standing to intervene as a matter of right since concern about rates is not within the scope of interests sought to be protected by the Atomic Energy Act. The cases are legion. E.g., Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), ALAB-424, 6 NRC 122, 128 n. 7 (1977); Watts Bar Nuclear Plant, supra, ALAB-413, 5 NRC at 1420-21 (1977); Detroit Edison Co. (Greenwood Energy Center, Units 2 and 3), ALAB-376, 5 NRC 426, 428 (1977); Public Service Co. of Oklahoma (Black Fox, Units 1 and 2), LBP-77-17, 5 NRC 657, 659 (1977), aff'd in part and rev'd in part, ALAB-397, 5 NRC 1143 (1977). Nor is such interest within the zone of interests protected by the National Environmental Policy Act. Watts Bar, supra, ALAB-413, 5 NRC at 1420-21; Febble Springs, supra, ALAB-333, 3 NRC at 806 (1976). Thus, at bottom, these economic claims do not provide any basis for concluding that petitioner may participate in this proceeding as a matter of right.

on pursuing its own theoretical interests and value preferences with regard to nuclear energy. Consequently, the petition should be denied for failure to demonstrate that petitioner's interests may be affected by the outcome of this proceeding.

C. Petitioner Should Not be Granted Discretionary Intervention

Petitioner attempts to establish standing to intervene as a matter of right and does not request discretionary intervention. Nevertheless, the Board may consider whether, as a matter of discretion, petitioner should be admitted as a party. In Pebble Springs, the Commission concluded that in circumstances where standing to intervene as a matter of right is lacking, participation in the proceeding may nevertheless be allowed as a matter of discretion.³⁶ The Commission suggested that such discretionary intervention might be granted "where petitioners show significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, set forth these matters with suitable specificity to allow evaluation, and demonstrate their importance and immediacy, justifying the time necessary to consider them" (emphasis added).³⁷ It is clear that the "most important factor to be considered is the extent of

³⁶ Pebble Springs, supra, CLI-76-27, 4 NRC at 614-17.

³⁷ Id. at 617.

the contribution which might be expected of petitioner."³⁸ Other factors to be considered are those set forth in 10 CFR § 714(a) and (d).³⁹

sed on the matters raised in the petition to intervene, there is absolutely no need for a hearing to be conducted on the WNP-1 operating license application. Petitioner has raised no issues of substance which require resolution in a hearing, but rather has set forth unparticularized statements of concern. Petitioner claims, for example, that "there exists no reasonable assurance", that "construction will have been in accordance with the rules and regulations of the Commission" or "that operation of the project will not endanger the public health and safety".⁴⁰ These are not the types of specific, well-documented contentions which warrant a hearing.

Further, petitioner has demonstrated no unique, special, or even general expertise which would contribute to the development of a sound evidentiary record on substantial issues. As noted, the Commission in Pebble Springs, contemplated a showing of "significant ability to contribute on substantial issues".⁴¹ Petitioner asserts

³⁸ Nuclear Engineering Co., Inc. (Sheffield, Illinois, Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 743-44 (1978).

³⁹ Pebble Springs, supra, CLI-76-27, 4 NRC at 616.

⁴⁰ Petition at ¶8.

⁴¹ Pebble Springs, supra, CLI-76-27, 4 NRC at 617.

in this regard that it has been granted "full party status" in five proceedings before the Commission, including the application for a construction permit for Pebble Springs, Units 1 and 2 and two license amendments for the Trojan Nuclear Power Plant.⁴² Mere participation in a proceeding, of course, does not establish that the participant has contributed constructively to the development of a sound evidentiary record on substantial issues. Nor has petitioner cited any significant contributions it actually made to developing the record in these five proceedings. Further, even if petitioner had participated meaningfully in those proceedings, it would not follow ipso facto that it would contribute significantly to development of a sound record basis. In short, there is no basis to conclude that this petitioner demonstrates such special expertise that on these grounds alone it should be admitted to this proceeding.⁴³

⁴² Petition at ¶3.

⁴³ Petitioner is currently involved in the Skagit/Hanford Nuclear Power Project hearing and is the sponsor of several contentions in that proceeding. In addition, the petitioner has requested that NRC hearings be conducted regarding two construction permit amendments sought by the Supply System. March 18, 1982 "Request for Hearing," Docket No. 50-460 (WNP-1) and February 22, 1982 "Request for Hearing," Docket No. 50-397 (WNP-2). In these circumstances, the teachings of the Appeal Board in Pennsylvania Power and Light Company, et al. (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 339 (1980), raise the serious question of whether the petitioner would be overextended and not have the resources to contribute meaningfully.
(footnote continued)

As to the other factors specified in 10 CFR §§2.714(a) and (d) for consideration in evaluating discretionary intervention, none weighs in favor of granting the instant petition.⁴⁴ On the other hand, the concerns raised by petitioner would normally be evaluated by the NRC Staff during the course of its review of any application, including the WNP-1 application. The NRC Staff represents the general public in NRC proceedings and reviews, and will certainly represent the petitioner and explore its general concerns in the performance of its overall review of the WNP-1 application. Further, the petitioner may comment on the Staff's environmental and safety reviews at each stage of the review process. Consequently, to the extent that any concern may exist as to the operation of WNP-1, those concerns will not go unaddressed.

Most important of the factors to evaluate in the context of discretionary intervention is, in the Applicant's view, the compelling fact that petitioner's participation will significantly and inappropriately broaden the licensing process for WNP-1. Because the instant

footnote continued from previous page)

fully to the record in the instant proceeding. It is valid for this Board to consider the ability of the intervenor to participate in three major simultaneous NRC licensing cases in considering whether discretionary intervention should be granted.

⁴⁴ See 12-16 of this Amended Answer.

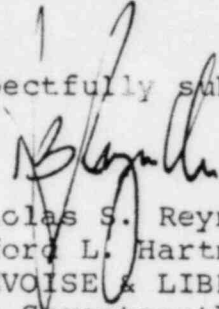
petition to intervene is the only one filed in response to the NRC's notice of opportunity for hearing, this operating license application would be uncontested and, as such, not involve a hearing if petitioner is denied intervention. In these circumstances, and mindful of the teachings of the Appeal Board in Zimmer, supra, this Board convened to rule on the instant petition to intervene must take the utmost care to assure that the petitioner has a true and substantial stake in the proceeding.

The instant petition utterly fails to establish that petitioner has demonstrated in a timely manner a true stake in the proceeding and that it is nonetheless entitled to participate in this proceeding. The facts revealed by the petition clearly indicate that these failures are not a matter of draftsmanship, but of legal deficiencies in the petition. Both proximity and expertise in the technical subject are obviously lacking. Accordingly, the Board should not subject the Applicant to a protracted hearing at the sole instance of the petitioner. Permissive intervention should not be granted to the petitioner.

III. Conclusion

In view of the foregoing, the Board should deny the petition to intervene as a matter of right, and also should refuse to grant permissive intervention.

Respectfully submitted,



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Date: November 17, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Applicant's Amended Answer In Opposition To Request For Hearing and Petition For Leave To Intervene" in the above-captioned matter were served upon the following persons by deposit in the United States mail, first class, postage prepaid this 17th day of November, 1982:

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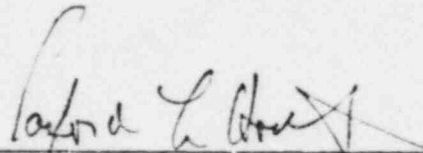
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