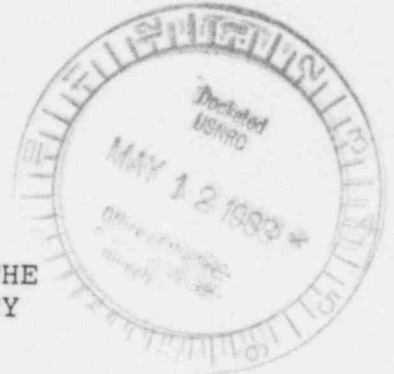


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of )

)  
PUBLIC SERVICE COMPANY )  
OF INDIANA, INC. )  
WABASH VALLEY POWER )  
ASSOCIATION, INC. )  
(Marble Hill Nuclear )  
Generating Station, )  
Units 1 & 2 )

Docket Nos. STN 50-546  
STN 50-547



APPLICANTS' ANSWER TO PETITION  
FOR LEAVE TO INTERVENE FILED BY THE  
INDIANA SASSAFRAS AUDUBON SOCIETY

1. Public Service Company of Indiana, Inc. and Wabash Valley Power Association, Inc. ("Applicants") were served on April 27, 1982, with the petition for leave to intervene of the Indiana Sassafras Audubon Society of Lawrence, Greene, Monroe, Brown, Morgan and Owen Counties ("Petitioner").

2. Although Petitioner outlines general areas of concern, it fails to establish a sufficient interest in this proceeding to establish its standing as either a matter of right or discretion. Petitioner does not address the nature of its right under the Atomic Energy Act of 1954, as amended, to be made a party to this proceeding, the nature and extent of its property, financial, or other interest in this proceeding, or the possible effect of any order that may be entered in this proceeding on its interest.

3. Section 189 of the Atomic Energy Act of 1954, as amended, states that "the Commission shall grant a hearing

DS03

upon the request of any person whose interest may be affected by the proceeding, and shall admit any such as a party to such proceeding." 42 U.S.C. § 2239 (1954). The Commission's regulations implementing section 185 of the Atomic Energy Act require that the petition for leave to intervene set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why the petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d) of this section. 10 C.F.R. § 2.714(a)(2) (1982). The factors in paragraph (d) are as follows:

(1) The nature of the petitioner's interest in the proceeding under the Act to be made a party to the proceeding.

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

10 C.F.R. § 2.714(d) (1982).

4. The Commission has established that to determine whether a petitioner for intervention in a domestic licensing proceeding has alleged an interest that may be affected by the proceeding, contemporaneous judicial concepts of standing should be used. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CL1-76-27, 4 NRC 610, 613-14 (1976). Thus, to establish standing to intervene as a matter of right, a petitioner

must satisfy two tests: the "injury in fact" test and the "zone of interest" test. The injury in fact test is satisfied if a petitioner alleges some injury to it that has occurred or will probably result from the proceeding. To meet the zone of interest test, a petitioner must allege an interest arguably within the zone of interest to be protected or regulated by the statute in question. Id. at 613; Virginia Electric & Power Co. (North Anna Power Station, Units 1 and 2), ALAB-342, 4 NRC 98, 101 (1976). See Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 153 (1970); Sierra Club v. Morton, 405 U.S. 727 (1972); Warth v. Seldin, 422 U.S. 490 (1975); Long Island Lighting Co. (Jamesport Nuclear Power Station, Units 1 and 2), ALAB-292, 2 NRC 631, 637-38 (1975).

5. Petitioner herein has failed to articulate with particularity any cognizable interest in this proceeding and how any such interest might be affected by the results of this proceeding. Basically, Petitioner has alleged neither injury that has resulted or will probably result from this proceeding, nor an interest within the zone of interest to be protected or regulated by the statutes in question.

6. According to Petitioner, its interest in this proceeding is established by the fact that its membership "lives within the service area of Public Service Indiana . . . and as ratepayers have a financial interest in whether or how it [Marble Hill] will operate . . . ."

7. It is well settled that a petitioner's status as a ratepayer will not confer standing in a licensing proceeding. Pebble Springs, 4 NRC at 614; The Detroit Edison Co. (Greenwood Energy Center, Units 2 and 2), ALAB-376, 5 NRC 426, 428 (1977). The Commission's decision in Pebble Springs is dispositive of whether status as a ratepayer is a sufficient interest on which to grant intervention:

With respect to the "zone of interest" requirement, these ratepayer Petitioners seek a complete economic analysis of nuclear power as part of the licensing proceeding in order to avoid even the possibility of increased future electric rates. While this "interest" is understandable, it does not come within the "zone of interest" protected by the Atomic Energy Act.

Id. at 614 (footnote omitted). See Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1147 (1977). Moreover, Petitioner's interest as a ratepayer is not within the zone of interest protected by the National Environmental Policy Act of 1969 ("NEPA"). Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804, 806 (1976); Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1420-21 (1977); The Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 475 (1978). For any alleged economic harm to a ratepayer petitioner to be within those interests protected by NEPA, the harm must be environmentally related, i.e. the economic injury will be caused by the impact of the federal action upon the environment. Watts Bar, 5 NRC at 1421.

Petitioner, therefore, has failed to allege an interest protected or regulated by the Atomic Energy Act or NEPA.

8. Petitioner, in addition, asserts that its membership has "a deep concern for the public health and safety were it [Marble Hill] to operate." This allegation, however, is not sufficiently particularized to afford a basis for judicial standing. See Pebble Springs, 4 NRC at 614. Such an interest is merely a "generalized grievance," undifferentiated from that of any other citizen and thus insufficient to support intervention. Edlow International Co. (Agent for the Government of India), CLI-76-6, 3 NRC 563, 576 (1976). Although close proximity has been deemed enough to establish the requisite interest for standing as a matter of right, Petitioner has identified no one in its membership that resides in such close proximity to the plant. Compare Watts Bar, 5 NRC at 1421 n.4 with Diaryland Power Cooperative (LaCross Boiling Water Reactor), ALAB-497, 8 NRC 312, 313 (1978). See generally Virginia Electric & Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979); Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-183, 7 AEC 222, 223-24 (1974).

9. As an organization seeking to intervene on behalf of its members, Petitioner is required to identify individual members and their interests that may be affected by the outcome of this proceeding. Omaha Public Power District (Fort Calhoun Station, Unit No. 1), CLI-72-24, 5

AEC 9 (1972); Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422-23 (1976). Petitioner also is required to demonstrate that the individuals whose interests are potentially affected have authorized the Petitioner to represent them. Barnwell, 3 NRC at 422-23. Petitioner satisfied none of these requirements in its petition of April 16, 1983. The petition states simply that the "membership" of Petitioner has a financial interest in this proceeding. As stated above, Petitioner's interest is insufficient to confer standing because it does not evidence a potential injury in fact and is not within the zone of interest protected or regulated by the Atomic Energy Act or NEPA. See Nuclear Engineering Company, Inc. (Sheffield, Illinois Low-Level Radioactive Waste Disposal Site), ALAB-473, 7 NRC 737, 741-43 (1978).

10. The Commission has determined that petitioners may be granted standing to intervene as a matter of discretion. Pebble Springs, 4 NRC at 616. The Commission in Pebble Springs summarized the factors to be considered in determining whether to grant discretionary intervention:

(a) Weighing in favor of allowing intervention--

(1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

(b) Weighing against allowing intervention--

(4) The availability of other means whereby petitioner's interest will be protected.

(5) The extent to which the petitioner's interest will be represented by existing parties.

(6) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

Id. The Commission went on to state that discretionary intervention would be more readily available to a petitioner who has "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." Id. at 617. See Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1151 n.14 ("the pivotal factor in determining whether to grant discretionary intervention will be that of the ability of the petitioner to make a valuable contribution to the development of a sound record").

11. Petitioner herein has failed to establish its "significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented." Moreover, Petitioner has neither set forth these matters "with suitable specificity to allow

evaluation" nor "demonstrate[d] their importance or immediacy."

12. Petitioner's history of participation at the construction permit stage demonstrates that Petitioner has no special expertise to bring to this proceeding. At the construction permit stage of this proceeding, Petitioner was permitted to intervene (on more specific allegations than presented herein) and was later consolidated with other intervenors under the heading of Joint Intervenors. See Public Service Company of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), LBP-77-52, 6 NRC 294, 298 (1977). Joint Intervenors failed to file any testimony in support of their contentions and did not participate at all in the evidentiary hearing. However, all of their contentions were litigated because identical contentions were advanced by other parties. Joint Intervenors also failed to file any proposed findings of fact or conclusions of law based on the record made by the other parties. After repeatedly requesting Joint Intervenors to explain why they should be allowed to continue as parties, the licensing board dismissed Joint Intervenors as parties to the proceeding. Id. at 300-01.

13. Applicants reserve their right to object to the contentions that Petitioner seeks to have litigated in this proceeding until after Petitioner's standing has been determined.

14. For the foregoing reasons, Applicant  
that the petition for leave to intervene filed  
Indiana Sassafras Audubon Society be denied.

Respectfully submitted  
LeBOEUF, LAMB, LEIBY

By Harry H. Vary  
1333 New Hampshire  
Suite 1100  
Washington, D.C.  
(202) 457-7500

Attorneys for Public Service  
Company of Indiana, Inc.  
Wabash Valley Power Association, Inc.

Of Counsel:

KEITH R. ANDERSON

JON D. NOLAND  
JAMES R. POPE

Public Service Company of Indiana, Inc.  
1000 East Main Street  
Plainfield, Indiana 46168

May 12, 1983

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

|                        |   |                        |
|------------------------|---|------------------------|
| In the Matter of       | ) |                        |
|                        | ) |                        |
| PUBLIC SERVICE COMPANY | ) | Docket Nos. STN 50-546 |
| OF INDIANA, INC.       | ) | STN 50-547             |
| WABASH VALLEY POWER    | ) |                        |
| ASSOCIATION, INC.      | ) |                        |
| (Marble Hill Nuclear   | ) |                        |
| Generating Station,    | ) |                        |
| Units 1 & 2            | ) |                        |

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of May, 1983, served copies of the foregoing document, entitled "Applicant's Answer to Petition for Leave to Intervene Filed by The Indiana Sassafras Audubon Society," by hand delivering and by mailing first class, postage prepaid and properly addressed, copies thereof to the following:

Ivan W. Smith, Chairman  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555  
(Hand Delivery)

Dr. Oscar H. Paris  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555  
(Hand Delivery)

Gustave A. Linenberger  
Atomic Safety and Licensing  
Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555  
(Hand Delivery)

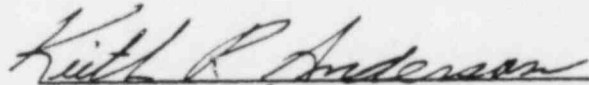
Elaine I. Chan, Esq.  
Office of Executive Legal  
Director  
U.S. Nuclear Regulatory  
Commission  
Washington, D.C. 20555  
(Hand Delivery)

Mary Pat Lynch, President  
The Indiana Sassafras Audubon  
Society  
605 South Fess Avenue, Apt. 6  
Bloomington, Indiana 47401  
(By Mail)

Dr. Harold G. Cassidy  
Save the Valley  
605 West Second Street  
Madison, Indiana 47250  
(By Mail)

Tom Zeller  
Vice President  
Valley Watch, Inc.  
P. O. Box 2262  
Evansville, Indiana 47714  
(By Mail)

Fred Hauck  
Save the Valley  
R.R. #3, Tower Heights  
Shelbyville, Kentucky 40065  
(By Mail)

  
Keith R. Anderson

LeBoeuf, Lamb, Leiby & MacRae  
1333 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 457-7500

Attorneys for Public Service  
Company of Indiana, Inc.