LBP-79-1
January 2, 1979

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Charles Bechhoefer, Chairman
Dr. David R. Schink, Member
Frederick J. Shon, Member

In the Matter of	)	
	)	
DETROIT EDISON COMPANY, ET AL.	)	Docket No. 50-341
	)	
(Enrico Fermi Atomic Power Plant, Unit 2)	)	

PREHEARING CONFERENCE ORDER
RULING UPON INTERVENTION PETITIONS

On September 11, 1978, the Nuclear Regulatory Commission published a Notice of Opportunity for Hearing in this operating license proceeding involving the Enrico Fermi Atomic Power Plant, Unit 2, a boiling water reactor located on the western shore of Lake Erie in Frenchtown Township, Monroe County, Michigan. 43 Fed. Reg. 40327. Requests for a hearing and petitions for leave to intervene were filed, respectively, by the Citizens for Employment and Energy (CEE) and by two individuals, Martha Drake and Dan Drake. In our Memorandum and Order dated November 13, 1978 (LBP-78-37, 8 NRC), we outlined some of the background information concerning these petitions; we need

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here note only that we there ordered a special prehearing conference to be convened on December 18, 1978 to consider the petitions and that we permitted supplements to the petitions to be filed until December 4, 1978.[1/]

CEE filed such a supplement; the Drakes did not. Responding to the suggestion in our Memorandum of December 4, 1978, the Applicants and Staff on December 15, 1978, each filed answers to CEE's supplemental petition. (Those parties previously had filed responses to CEE's and the Drakes' original petitions.)

In their original filings, the Applicants and Staff both had pointed to various deficiencies in the two intervention petitions which, in the respective opinions of those parties, precluded the grant of either petition. In their supplemental response, the Applicants continued to find inadequate CEE's demonstration of standing. The Applicants also took the position that, for a variety of reasons, none of the contentions advanced by CEE in its supplemental petition satisfied the requirements of the

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1/ Notice of the Prehearing Conference was published at 43 Fed. Reg. 54148 (November 20, 1978).

NRC Rules of Practice. On the other hand, the Staff asserted that CEE had satisfactorily demonstrated its standing to intervene and that several of its contentions were adequate; it concluded that CEE's intervention petition should be granted.

CEE appeared at the prehearing conference, through several of its members. Neither of the Drakes attended the conference. However, counsel for the NRC Staff read into the record a letter to him, dated December 10, 1978, from Mrs. Drake, advising that she and her son wished to withdraw their petition (Tr. 17-18). (This letter had neither been sent to the Board nor, apparently, served on any other party; the Staff subsequently arranged for such service.)

For reasons which follow, we grant the petition to intervene of CEE. In addition, based on the letter to NRC Staff counsel, we grant the Drakes' request to withdraw their petition.[2/] A Notice of Hearing, in the form of the attachment hereto, is today being issued.

2/ Mrs. Drake asked that she be kept on the mailing list for this proceeding. The Board asked the Staff to arrange for that to occur (Tr. 18).

I.

1. Commission rules provide that, in order to be found acceptable, an intervention petition must "set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding * * *, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." 10 CFR §2.714(a)(2). In addition, a petitioner must file "a list of the contentions which [it] seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." 10 CFR §2.714(b). A petitioner that fails to meet these requirements with respect to at least one contention is not to be permitted to participate as a party. Ibid.

The Commission has ruled that judicial concepts of standing govern whether a petitioner has made an adequate showing of interest. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 612 (1976). To satisfy this standard, which is requisite to participation in a proceeding as a matter of right, a petitioner must demonstrate (1) "injury in fact" and (2) that the interest is "arguably within the zone of interest[s]" protected by the relevant statute — in this case, the

Atomic Energy Act and the National Environmental Policy Act. Id. at 613. If it should fail to do so, a petitioner may nevertheless be permitted to participate as a matter of discretion, where it can "make some contribution to the proceeding." Id. at 612.

2. CEE founds its demonstration of standing upon the interests of its members. We have pointed out previously that this course of action is open to it. LBP-78-37, supra, 8 NRC at (slip op., p. 13). We also noted, however, that an organization which elects this method for demonstrating interest must identify specifically the name and address of at least one affected member who wishes to be represented by the organization. Ibid. Further, the petition must also show that the person signing it has been authorized by the organization to do so. Id. at (slip op., p. 14).

At the time, CEE had stated only that "at least" one member — not further identified — resides within one mile of the plant and other members — also not identified — reside "at slightly greater distances." The petition was signed by a member with no indication that he was authorized to do so. With its supplemental petition, however, CEE furnished an affidavit of one of its members, listing his name and

address and stating that he resides within 35 miles of the proposed plant,[3/] that he is a member of CEE and desires CEE to represent his interests in the proceeding, and that he adopts and supports the statements of interests and contentions delineated in CEE's amended petition. CEE also submitted a statement by the "organizer, founder and acting director" of CEE to the effect that the individuals signing the original and supplemental petitions were authorized to do so. In addition, at the prehearing conference, CEE offered (and the Board accepted) the affidavit of another member who resides within two miles of the facility, also authorizing CEE to represent his interests and adopting the statements in CEE's supplemental petition.[4/]

A petitioner may base its standing upon a showing

3/ The Applicants questioned whether this member was a permanent resident or, instead, might be a student at a nearby university who, for that reason, might not live in the area during the time when the facility would be in operation. We need not decide whether a "non-permanent" resident could be denied intervention on that basis inasmuch as the particular member appeared at the prehearing conference and indicated he was not a student and planned to live in the area for the foreseeable future (Tr.19-20).

4/ The affidavit was read into the record (Tr.28). CEE was advised that it should file the original with the Secretary of the Commission and should serve other parties. Its representative agreed to do so (Tr.28-29).

that his or her residence, or that of its members, is "within the geographical zone that might be affected by an accidental release of fission products." Louisiana Power and Light Co. (Waterford Steam Electric Station, Unit 3), ALAB-125, 6 AEC 371, 372 n. 6 (1973). Distances of as much as 50 miles have been held to fall within this zone. Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 n. 4 (1977) (50 miles); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-107, 6 AEC 188, 193 (1973) (40 miles). Even if we were to give no weight whatsoever to CEE's statement that one of its members (not further identified) lives within one mile of the plant, it is clear that the residences of the identified members 35 and 2 miles from the site, respectively, lie within the zone potentially affected by an accidental release of radioactivity.

The Applicants assert that CEE has failed to "particularize" the interest of any of its members; it apparently seeks a statement not only that the member resides in a potentially affected area but, as well, "what specific interests of the member might be affected by the results of this proceeding" and "what specific interests CEE is to advocate on the member's behalf." Given CEE's statement

that accidental releases of radiation from the plant would adversely affect the economic and property interests of CEE's members residing near the plant and the health of those same members, and given the fact that the two specifically identified CEE members have adopted those statements, we are at a loss to envisage what further specificity could reasonably be imposed on a potential intervenor whose residence falls within the zone which has already been acknowledged by Appeal Board decisions as being potentially affected by an accident. In any event, we conclude that CEE has satisfactorily set forth with sufficient particularity its interest in the proceeding and how that interest may be affected by the results of the proceeding.[5/] Its contentions

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5/ The Applicants also argue that the interests of members which an organization seeks to represent must be germane to the organization's purposes (citing Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 343, 97 S.Ct. 2434, 2441 (1977)). They argue that, based on the statement in the CEE petition, the organization's purpose is merely to disseminate information about and stimulate public awareness and involvement in the study of nuclear power and alternative generating sources and that it does not extend to furthering the individual interests and concerns of its members. CEE disagrees, adding that it has in fact intervened in other proceedings (Tr. 30). From what is before us, we cannot conclude either that the intervention is outside the scope of CEE's explicit purposes or that such participation will not assist it in disseminating information about nuclear power. Beyond that, we question whether this Board is the proper forum before which the question whether an organization is acting in accord with its own authorizing charter may be raised. Cf. Cleveland Electric Illuminating Co. (Perry Nuclear Power Plant, Units 1 and 2), ALAB-443, 6 NRC 741, 747-48 (1977).

demonstrate the aspects of the proceeding in which it wishes to participate. That being so, we hold that CEE has adequately demonstrated its standing to participate in this proceeding.

II.

1. CEE has submitted 16 different contentions (paragraphs 4-19 of its amended petition), many of which are subdivided into a number of constituent parts. To permit intervention, a board need find only one which satisfies the requirements as to specificity and bases. 10 CFR §2.714(b); Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-104, 6 AEC 179, 194 (1973). Several of CEE's contentions clearly meet these standards, and others are susceptible of being modified in limited respects in order to do so. We will deal with the contentions seriatim.

Paragraph 4 of the petition alleges quality control problems with respect to construction of the plant. It identifies three "[s]pecific flaws in construction," of which at least the first two seem to warrant further

inquiry;[6/] it states that the project's construction supervisors and contractor were replaced because of their refusals to "sacrifice quality control in order to expedite the construction schedule;" it additionally points to poor physical security at the construction site as a potential cause of construction flaws; and it specifies that a member of CEE "who is and has been personally involved in the construction" of the plant is available to support the contention (see also Tr.53). Although some statements in the paragraph are ambiguous and in need of further refinement, the paragraph clearly includes a litigable issue. Insofar as it raises the specific matters identified above, the contention is accepted; the remainder of the contention is accepted on the condition that it be clarified and made more specific (as is discussed later in this opinion).

Paragraph 5 challenges the adequacy of the plant's radiation monitoring system. Although it is somewhat ambiguous,

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6/ The Applicants insist that these matters were resolved in the construction permit review. Although evidence may have been introduced, the Applicants concede that the construction permit Licensing Board made no explicit findings with regard thereto (Tr.61). Moreover, at the construction permit stage the proceeding was not contested. In such circumstances, we decline to treat that Licensing Board's general findings as an implicit resolution of these matters, as the Applicants suggest (Ibid.).

it at least seems to advocate a completely remote control system. In order to be a proper foundation for a litigable issue, however, this contention should be made more specific. In addition, we suggest that subparagraph (e)(3) of paragraph 4 properly belongs with this contention. Subject to such revision, this contention is also accepted.

Paragraph 6 questions the ability of "numerous components" of the facility to withstand 40 years of operation, and asserts that the Applicants have failed to provide adequate procedures for inspection and replacement of those components. The experience at Palisades, Fermi 1, and "other plants" is put forth as a basis. Neither of the named plants is a boiling water reactor but, when questioned about this at the prehearing conference, CEE also identified Duane Arnold (which is a boiling water reactor) as another example of a situation where a component ("coolant pipes") had prematurely failed (Tr.90-91). Subject to further clarification and specification as to which components are included, this contention is accepted.

Paragraph 7 has been withdrawn as a contention (Tr. 91).

Paragraph 8 raises questions as to the plant's emergency plan. The introductory sentence challenging the lack of emergency plans and procedures for all towns within a 100-mile radius of the plant, including Detroit, is too broadly written, and not supported by any information which would warrant a conclusion that such plans are necessary. Moreover, as both the Applicants and

Staff point out, under currently effective Commission regulations an applicant need not formulate an emergency plan for areas outside the low population zone. New England Power Co. (NEP Units 1 and 2), et al., ALAB-390, 5 NRC 733 (1977). Detroit and other unspecified towns within CEE's proffered 100 mile radius are outside that zone, which in this case apparently covers a radius of 3 miles from the plant. See the Staff's Interim Safety Evaluation Report (NUREG-0314, September, 1977), p. 2-2. Moreover, even under the Commission's proposed rule for facility emergency planning, 43 Fed. Reg. 37473 (August 23, 1978) (which we have been directed to use as guidance prior to the issuance of the final rule), there would be no basis for exploring the necessity for an emergency plan for an area with a 100-mile radius (or as distant as the City of Detroit)[7] absent particular information why such a plan would be warranted. No such information has been provided us.

On the other hand, a specific contention is created by the statement that there may not be a "feasible escape route for the residents of the Stony Pointe area" because the "only road leading to and from the area, Pointe Aux Peaux, lies very close to the reactor site" and, in the

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7/ Detroit is centered about 30 miles north-northeast of the facility. FES (construction permit), July, 1972, p. II-1.

event of an accident, "the residents would have to travel towards the accident before they could move away from it." The Applicants would require greater specificity as to why the emergency plan for the Stony Pointe area is inadequate. The Staff would accept this aspect of the contention. In view of the Appeal Board's remarks in Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-248, 8 AEC 957, 963 (1974),[8/] it is obvious to us that CEE has pinpointed a potential deficiency in the plan. Insofar as it relates to the Stony Pointe area, the contention is accepted.

Paragraph 9 also involves the emergency plan; it questions the adequacy of radiation treatment facilities in the event of an accident. As the Applicants and Staff correctly observe, CEE has failed to provide any factual support for this contention. Nor has it pointed out why the emergency plan submitted as part of the Final Safety Analysis Report is inadequate. The contention is thus

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8/ "It strains credulity to expect that people will drive closer to a reactor in order to escape from an emergency generated by the reactor. In the vernacular, it might appear to them that they were jumping from the frying pan into the fire." 8 AEC at 963.

not acceptable at this time. However, the Staff has not completed its review of the emergency plan. After it does so, CEE may supplement this contention with specific examples of deficiencies in the plan insofar as it deals with radiation treatment facilities.

Paragraph 10 questions whether adequate solutions have been reached for generic safety questions applicable to this plant. Several such questions are identified. CEE cites NUREG-0410, the Staff document outlining the program for resolving generic safety issues, and the Appeal Board decision in Gulf States Utilities Co. (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760 (1977), as foundations for this contention. The Applicants claim that greater specificity must be demonstrated, referring to remarks in River Bend to the effect that "mere identification of a generic technical matter" is not sufficient to establish an issue in controversy. And they fault CEE for "not even refer[ring] to the Application." In contrast, the Staff states that to date it has not addressed the generic problems with respect to this reactor and that, until it does so, CEE need not be held to any greater specificity. Further, at the prehearing conference, the Applicants

indicated that some, but not all, of the generic safety matters had been considered in their FSAR (Tr. 94). Given that concession, we find it not reasonable to require greater specificity at this time.

In addition, assuming a hearing is to be held, we will be required to address this question to at least some extent, even in the absence of a contention related thereto. See Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-491, 8 NRC 245 (August 25, 1978). The contention accordingly is accepted. After the Staff has issued its evaluation of the generic matters, CEE must particularize any such matters which it believes have not been adequately resolved, including reasons for its belief.

Paragraph 11 raises the question of whether the plant is adequately designed to withstand floods. Although the petition includes no basis for any concern about this problem, CEE at the prehearing conference indicated that it believed that two or three floods occurring after issuance of the construction permit had not adequately been considered (Tr.99-102). The Applicants and Staff claim that these floods were of less magnitude than the maximum probable

flood considered in the review of the plant (Tr.103,104) and that the contention should thus be rejected. These are factual claims going to the merits of the contention, upon which we are not authorized to base our decision. Accordingly, insofar as it claims that the post-construction-permit floods have not adequately been considered, the contention is accepted.

As CEE specifically admits (Tr.105), paragraph 12 constitutes a challenge to the Commission's regulations in 10 CFR Part 20. Such challenges are prohibited by 10 CFR §2.758, and CEE has not made the showing of "special circumstances" contemplated by that section to justify further consideration of such a challenge. The contention (including all its subparts) is therefore rejected.

As explained by CEE at the prehearing conference, paragraph 13 questions whether the Applicants have correctly taken into account the "reconcentration factor of certain radionuclides" in assessing whether the plant will comply with 10 CFR Part 50, Appendix I (Tr.106). The Applicants and Staff assert that this contention lacks specificity and basis; the Staff additionally states that reconcentration factors have been considered in 10 CFR Part 20 and Appendix I standards and will thus be taken into account in analyzing the facility's radioactivity releases. The Staff conceded, however, that the method of doing so is not prescribed by

regulation but rather is the subject of a regulatory guide; hence, the propriety of any given method of taking reconcentration factors into account is subject to inquiry in a proceeding (Tr.107-08). In addition, CEE indicated its willingness to consult its technical advisors in order to explain more satisfactorily its dissatisfaction with the Applicants' calculations (Tr.86,106). Subject to its doing so, the contention is accepted.

Paragraph 14, with its four subparagraphs, raises questions concerning the releases of radiation at various stages of the nuclear fuel cycle. The Applicants regard it as raising safety issues (Tr.109), whereas the Staff treats it at least in part as raising environmental questions. We will consider it in both lights inasmuch as on its face the petition is not entirely clear as to which type of issue CEE intends to raise. (At the prehearing conference, CEE indicated it had environmental issues in mind with respect to certain aspects of the contention (Tr.113), but it did not abjure the safety questions which also inhere in its contention.)

We read paragraph 14(a), involving impacts from the release of radon in the mining and milling of uranium, solely as an environmental issue. As such, it clearly constitutes a valid contention. See 43 Fed. Reg. 15613, at pp. 15615-16 (April 14, 1978);

Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), et al., ALAB-480, 7 NRC 796 (1978). We reject the Applicants' claim that CEE must show that the additional radon impact attributable to this facility would tip the cost-benefit balance against license issuance. The contention is therefore accepted. But we note that the Commission is considering resolving this issue on a generic basis. If it should do so prior to the completion of this proceeding, we will of course be bound by such resolution. Potomac Electric Power Co. (Douglas Point Nuclear Generating Station, Units 1 and 2), ALAB-218, 8 AEC 79, 82-83 (1974).

Subparagraph 14(b) states that the routine "allowable" releases and "common accidental releases" of radioactivity will cause excessive cancers. The Applicants, treating the contention as a safety question, regard it as an attack on the Commission's radiation standards and hence barred by 10 CFR §2.758. The Staff would reject the contention for lack of the requisite basis and specificity. Both positions have merit. The contention is therefore rejected.[9/]

9/ CEE's vague reference at the prehearing conference to studies of Drs. Mancuso and Sternglass (Tr.120) does not in our opinion cure the defects.

Subparagraph 14(c) raises the question whether the storage of spent fuel at the site has been adequately protected against internal or external sabotage.[10/] This seems to be a safety issue; but, whether safety or environmental, it clearly lacks the requisite specificity or basis. It is therefore rejected.

Subparagraph 14(d) asserts that there are both health and economic problems arising from the failure — presumably of the Applicants or Staff — to demonstrate a method for the effective long-term storage of high level and transuranic wastes. The Applicants consider this to be a safety issue and, under the provisions of 10 CFR §50.57, outside the scope of this proceeding. They also cite the decision in NRDC v. NRC, 582 F.2d 166 (2d Cir. 1978), rehearing denied (September 26, 1978), as authority for the proposition that no safety finding with respect to spent fuel storage need precede reactor operating license issuance. For its part, the Staff cites the Appeal Board decision in Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-455, 7 NRC 41, 49 (1978), where it was held that neither the Staff nor the Licensing Board need concern itself with the matter of the ultimate disposal of spent fuel in light

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10/ CEE has dropped the portion of the contention relating to safety problems attendant upon "overstorage" of spent fuel (Tr. 120).

of the Commission's implicit finding (42 Fed. Reg. 34391, July 5, 1977) that there is reasonable assurance that methods of safe permanent disposal of high-level wastes can be available when needed. Furthermore, to the extent this issue is environmental, it appears to be covered by Table S-3 to 10 CFR §51.20; further consideration beyond the values specified in that Table is not permitted. Douglas Point, ALAB-218, supra, 8 AEC at 85-90. The contention does not appear to be concerned with balancing the values for spent fuel storage included in Table S-3. If anything, it seeks to challenge those values. Accordingly, this contention is rejected.

Paragraph 15 raises questions about the future costs and availability of fuel. At the prehearing conference, CEE indicated that it had in mind an environmental issue which would bring into focus the effect of the potential unavailability or scarcity of fuel on the facility's cost-benefit balance (Tr. 134-35, 136). The Applicants take the position that the effects spelled out in subparagraphs (a) and (b) are the economic interests of CEE's members as ratepayers and, as such, outside the "zone of interests" of either the Atomic Energy Act or NEPA. See The Detroit Edison Co. (Enrico

Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473 (1978). It bases this position on the concluding paragraph of the contention, which states:

> The implication of (a) and (b) above is that, in addition to unexpected costs which will appear in our rates, CEE members and other Edison customers may in the future be affected by Edison's inability to fuel their nuclear plants (i.e. replacement costs for electricity during shutdowns).

The Staff originally took the position that subparagraph 15(a) created an acceptable contention, but at the prehearing conference it indicated that it had not considered the implications of the foregoing paragraph and that, after doing so, it believed the contention to be impermissible under several earlier decisions (including that relied on by the Applicants) (Tr.135). We agree with the Applicants' analysis of this contention (as later accepted by the Staff) and accordingly reject paragraphs 15(a) and 15(b) on that basis.

Subparagraph 15(c), concerning the implications of fuel scarcity on the United States balance of trade, raises an issue which is both speculative and lacking sufficient basis or specificity (as the Staff observes) and beyond the jurisdiction of this Board (as the Applicants assert). It is accordingly rejected.

Paragraph 16 attempts to challenge the legality of the sale of a portion of the facility to Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Cooperative, Inc. CEE reasons that the cooperatives "must satisfy all of the requirements for receiving an operating license without regard to the position of Edison" and that no such showing has been made. We reject this contention for two reasons. First, as the Staff points out, the question of the legality of the sale of a portion of the facility to the cooperatives is beyond the scope of this proceeding. But, even more important, we find this contention to be impermissibly vague. We know of no requirement that every co-owner and co-applicant satisfy all of the requirements imposed upon a lead applicant. When we afforded CEE the opportunity at the prehearing conference to specify in what way the cooperatives could not fulfill any particular responsibilities which may be imposed on them by Commission regulations, it was unable to do so (Tr. 139).11/

11/ The Applicants point out that the person who at the time of the filing of CEE's intervention petition was a director of CEE (Dr. Robert Asperger) previously attempted to raise this issue through a show-cause proceeding under 10 CFR §2.206, that the Staff addressed this issue in a letter dated March 3, 1978, that the Commission declined to review the matter, and that no appeal of the Commission's final determination in this matter was taken (Tr. 140). Therefore, according to the Applicants, consideration of this

(footnote continued)

Paragraph 17 constitutes a collateral attack upon an environmental assessment performed by another agency, the Rural Electrification Administration, based on the fact that there is currently pending a judicial challenge to REA's impact statement prepared in conjunction with financing of the cooperatives' share of the project. We believe it inappropriate for us to assess the validity of REA's impact statement. Public Service Co. of Indiana (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-493, 8 NRC 253, 266-68 (1978); cf. Consumers Power Co. (Midland Plant, Units 1 and 2), ALAB-458, 7 NRC 155, 174-76 (1978). Moreover, we questioned

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(footnote continued)

11/ contention should be barred through principles of res judicata and collateral estoppel. Cf. Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-182, 7 AEC 210, affirmed as to this point, CLI-74-12, 7 AEC 203 (1974). We disagree. Although the March 3, 1978 letter did reject a challenge to the legality of the sale to the cooperatives, the reasons posed for the asserted illegality were not those which CEE attempts to raise here. Moreover, Dr. Asperger's challenge to the legality of the sale was asserted in his personal capacity. Despite his former participation in the affairs of CEE, that organization need not be freighted with the adjudicatory disabilities brought about by Dr. Asperger's personal activities. (The Farley case cited by the Applicants involved the same party attempting to raise the same issues at the operating license stage that he formerly raised at the construction permit stage.)

CEE and the Applicants as to the possible effect on the cooperatives' ability to finance their share of the project should REA's impact statement be found invalid. CEE could specify no such effect (Tr.143-44); the Applicants stated that there would be no such effect, since the bonds in question had already been issued (Tr.146-47). The only effect, according to the Applicants, might be further administrative activities by REA; they saw no likelihood that the Applicants might be enjoined from spending the bond proceeds (Tr.147). The contention is thus far too speculative and, for that reason as well, is rejected.

Paragraph 18 asserts that NRC has failed to address the availability of alternatives to this plant, either at the construction permit stage or thereafter. This contention clearly lacks merit; the construction permit Final Environmental Statement did consider various alternatives (FES, July 1972, §IX, pp. IX-1 through IX-6) and the Licensing Board evaluated that discussion. LBP-72-26, 5 AEC 120, 126 (1972). Furthermore, CEE has not specified any deficiencies in the discussion of alternatives, either in the construction permit FES or in the Applicants' operating license Environmental Report. The contention therefore lacks the required

basis and specificity. Moreover, we agree with the Staff that the assessment of alternatives is more properly performed at the construction permit stage of review. At the very least, we would require a strong showing — not present here — that there exists a significant issue which had not previously been adequately considered or significant new information which had developed after the construction permit review. Cf. 10 CFR §51.21. This contention is accordingly rejected.

CEE's final contention, paragraph 19, puts into issue the effects of cooling tower operation given the "peculiar atmospheric conditions" in the Monroe area. The Applicants would reject this contention for vagueness. The Staff initially would have accepted it, in view of its reference to "peculiar atmospheric conditions."

We questioned CEE about the nature of those atmospheric conditions (Tr. 152), but it was unable to provide further specificity. Thereafter, the Staff changed its position and advocated rejection of the contention (Tr. 169).

It appears to us that CEE is not now prepared to come forth with any information with respect to cooling towers which was not already considered at the construction permit stage. See LBP-72-26, supra, 5 AEC at 129, 130. At the present time, therefore, we do not accept this contention. Should CEE be able to come forward with additional information with respect to the asserted "peculiar atmospheric conditions" in the area, this determination would of course be subject to reconsideration by the hearing board. If it decides to pursue this contention, CEE would be well advised to submit the additional information as part of its rewriting of certain contentions, as

provided infra.

In sum, we accept portions of paragraph 4, one specified part of paragraph 8, paragraph 10, paragraph 11 (interpreted as described above), and paragraph 14(a) as issues in controversy. The remainder of paragraph 4, and paragraphs 5, 6, and 13 are accepted subject to further revision or clarification as earlier described. Paragraphs 9 and 19 are rejected but will be subject to reconsideration if further information is provided. We reject one portion of paragraph 8 and paragraphs 12 (all subparagraphs), 14(b), 14(c), 14(d), 15 (all subparagraphs), 16, 17 and 18. Paragraph 7 and a portion of paragraph 14(c) have been withdrawn.

2. In accepting conditionally certain of the CEE contentions, we have recognized that some have ambiguities and that others need to be somewhat restructured, along the lines indicated in our previous discussion. We have also indicated that two contentions which we rejected might be reconsidered if further information were supplied. It is our belief that CEE should be given further opportunity to improve those contentions — particularly in view of the circumstance that it has not been represented by experienced counsel in these

proceedings. Cf. Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1973). The Staff has offered to assist CEE, and CEE expressed a willingness to be assisted (Tr. 46-47,56). We therefore ask that CEE meet with the Staff (and the Applicants as well) to attempt to refine its contentions and to reach agreement if possible on their wording. By February 2, 1979, the parties are to report to the hearing board their progress in this regard, including contentions as to which there is agreement as to final wording and those where a dispute remains. At that time, the hearing board (which is comprised of the same members as this one) will determine whether a future prehearing conference to resolve contentions is called for or, alternatively, whether a final determination on the "open" issues can be rendered.

III.

Because CEE has established standing as of right, there is no necessity for us to treat the question whether or not CEE should be admitted as a matter of discretion. However, inasmuch as all the parties hereto may not agree with our standing determinations, we wish to make it clear that, in the exercise of our discretion, we would admit CEE as a party.

The Commission has spelled out a number of discrete factors which may be taken into account in determining whether a petitioner lacking standing should nevertheless be admitted as a matter of discretion. Pebble Springs, CLI-76-27, supra, 4 NRC at 616. Foremost among these is whether such participation "would likely produce 'a valuable contribution'" to the decision-making process. Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), ALAB-363, 4 NRC 631, 633 (1976); Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), ALAB-397, 5 NRC 1143, 1145 (1977); Watts Bar, ALAB-413, supra.

For at least two of the issues raised by CEE, it appears that that organization's members could measurably assist in developing an adequate decisional record. With respect to the quality control issue (paragraph 4 of the petition), CEE has identified one of its members who is a construction worker and who will testify as to the alleged construction defects and defective practices (Tr. 53). Such a witness can foreseeably provide a unique contribution to identifying (and perhaps resolving) any construction quality control problems which may exist. And with respect to evacuation of the Stony Pointe area (paragraph 8), CEE's members include at least one from

that locale (Tr. 80) who can foreseeably provide significant insights into the problems attendant to transportation in that area. For these reasons, the Board believes that CEE's participation will likely be of assistance in resolving these issues, and, accordingly, that it will produce a valuable contribution to the decision-making process.

Furthermore, none of the other discrete factors spelled out by the Commission in Pebble Springs, CLI-76-27, 4 NRC at 616 (which we need not recite here) operates to dissuade us from our view that adjudicatory consideration of CEE's issues is desirable and that CEE's participation will be of value. Indeed, absent CEE's participation there will be no hearing at all. That being so, even absent standing as of right, we would admit CEE as a matter of our discretion.

IV.

For the foregoing reasons, the request for a hearing and petition for intervention of the Citizens for Employment and Energy (CEE) is granted.

This Order is subject to appeal to the Atomic Safety and Licensing Appeal Board pursuant to the terms of 10 CFR

§2.714a. An appeal must be filed within ten (10) days after service of this Order. The appeal shall be asserted by the filing of a notice of appeal and accompanying supporting brief. Any party other than the appellant may file a brief in support of or in opposition to the appeal within ten (10) days after service of the appeal.

IT IS SO ORDERED.

THE ATOMIC SAFETY AND
LICENSING BOARD
designated to rule on
petitions for leave to
intervene.

Charles Bechhoefer, Chairman

Dated at Bethesda, Maryland,
this 2d day of January, 1979.

Attachment:
Notice of Hearing