

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges:
Ivan W. Smith, Chairman
Gustave A. Linenberger, Jr.
Dr. Oscar H. Paris

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In the Matter of)

PUBLIC SERVICE COMPANY OF INDIANA, INC.)
WABASH VALLEY POWER ASSOCIATION, INC.)

(Marble Hill Nuclear Generating)
Station, Units 1 and 2))

Docket Nos. 50-546
50-547

September 14, 1983

MEMORANDUM AND ORDER

The Board issued a Memorandum and Order on June 30, 1983 ruling that two petitioners for leave to intervene in this proceeding, Valley Watch, Inc. and Sassafras Audubon Society of South Central Indiana (Sassafras) had failed to demonstrate standing to intervene. Their petitions were denied with leave to file amended petitions. We also found that a third petitioner, Save the Valley, had demonstrated standing. Sassafras filed an amendment to its petition, dated July 21, and Valley Watch filed an undated amendment, received by the Secretary of the Commission on August 2. Both amendments provide additional information and affidavits of members of their respective organizations, but as we explain below, the petitioners still fall short of demonstrating

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their standing to intervene according to the standards discussed in the Board's June 30 Order.

Valley Watch

Valley Watch provided the affidavits of three members. Mr. Blair and Dr. Wham live in Evansville, Indiana and Henderson, Kentucky, respectively. Each states, in identical language:

That despite the distance from my residence to the proposed Marble Hill site being greater than 50 miles, I feel that the Ohio River provides a direct link from the proposed facility to the lower Ohio River region. That therefore my environmental, health, recreational, and property interests are affected by the outcome of the Operating Licensing proceedings for Marble Hill Units 1 and 2.

We have accepted Applicant's estimate that Evansville is about 150 land miles and 200 river miles from the Marble Hill site. It is consistent with our own rough map measurements. Henderson is somewhat farther from the site.

As we noted in our June 30 Order, the Appeal Board in Dairyland Power Cooperative (LaCrosse), ALAB-497, 8 NRC 312 (1978), determined that a petitioner living 75 miles from the facility who alleged general safety contentions was beyond the geographical zone of interest. Id. n.2. Mr. Blair and Dr. Wham live twice that far in land miles. They have not explained why the even greater distance in river miles brings them within the geographical zone of interest in this proceeding. Their affidavits do not help the Valley Watch petition.

The third affiant, Mr. Spencer, lives in Louisville, Kentucky, just short of fifty miles from the site, and he states:

That my environmental, health, recreational, and property interests are affected by the outcome of the Operating Licensing proceedings for Marble Hill Units 1 and 2.

Applicant has correctly cited Tennessee Valley Authority (Watts Bar 1 and 2), ALAB-413, 5 NRC 1418, 1421 n.4 (1977), and Virginia Electric and Power Company (North Anna 1 and 2), ALAB-522, 9 NRC 54, 55-56 (1979), as appropriate guidance to the Board in determining standing to intervene as demonstrated by distance to the facility. In Watts Bar the Appeal Board stated that a distance of approximately 50 miles "is not so great as necessarily to have precluded a finding of standing based upon residence" But Watts Bar does not stand for the proposition that residency within 50 miles, simply as a consequence of the residency, is sufficient to establish standing. In North Anna a petitioner living "little more than a stones throw" from the facility would not be required, because of such close proximity, to state well established concerns. Such proximity, standing alone, was deemed enough to establish standing, according to the Appeal Board, who cited Gulf States Utility Company (River Bend 1 and 2), ALAB-183, 7 AEC 222, 223-24 (1974).

The River Bend decision takes us from very close proximity to the plant, as in North Anna, to a distance of about 25 miles. The River Bend Appeal Board stated:

Without undertaking to draw for these purposes an exact circumferential line around this or any other facility site, we record our belief that, as a general proposition, a person

whose base of normal, everyday activities is within 25 miles of the site can fairly be presumed to have an interest which might be affected by reactor construction and/or operation. At the very least, indulgence by a licensing board in such presumption cannot be tarred with the brush of irrationality. [Emphasis in original]

Id. at 226.

In the case of the Valley Watch member, Mr. Spencer, we are unable to assume that residing a distance of about 50 miles from the plant site automatically exposes him to the unexplained environmental and health effects. In that respect we note that the distance of 50 miles is just at the outer bounds of the normal ingestion pathway emergency planning zone (EPZ) of the Commission's regulations, 10 CFR 50.47(b)(10). As to Mr. Spencer's recreational and property interest in the proceeding, he tells us nothing whatever about them except that they exist. Mr. Spencer's affidavit does not establish derivative standing for Valley Watch.

However, the Board is concerned that it may have unfairly led Valley Watch to believe that such generalized statements would suffice in any amended petition. In our June 30 Order (at 7) we stated:

The parties and the Board are entitled to some assurance that Valley Watch does in fact represent those members with standing to intervene in those respects in which the identified members believe their interests are affected by the outcome of the proceeding.

However we will require this showing only in a general way because it is unlikely that Valley Watch members believe that their organization will enter the proceeding in order to uncritically support the application for an operating license. When the members with standing to intervene authorize Valley Watch to represent them in this proceeding, if they do, they may generally state any radiological health, safety and environmental concerns, or they may indicate that they support

the general objectives of the Valley Watch petition to intervene. [Footnote omitted, underlining supplied.]

Nothing in our order above was intended to relieve Valley Watch from the obligation to demonstrate that it represented a member who has standing to intervene in the first instance. Having established standing, consistent with the case law we discussed in the June 30 order, the intervenors would not be required to go over point by point the fact that Valley Watch is authorized to represent them in the interest upon which their standing is based. A general statement to that effect would have sufficed.

The Board will defer for now any final ruling on whether Valley Watch has standing to intervene based upon Mr. Spencer's standing until Mr. Spencer or someone else provides additional information, as we note below.

Sassafras

The Sassafras Audubon Society also provided affidavits of three members all residing in Columbus, Indiana who state identically and simply: ". . . my environmental, recreational health and property interests are affected by the outcome of the Operating Licensing Proceedings for Marble Hill Units 1 and 2." Applicant calculates Columbus, Indiana to be about 47 miles from the Marble Hill site. This seems to be about correct. Columbus is located to the north and west of the site, and is not on the Ohio river. The affidavits of the three

Columbus residents suffer the same infirmity as the Spencer affidavit for Valley Watch. It tells too little about the potential for injury-in-fact. Residency at that distance, standing alone, is not sufficient to assume such injury.

In its amendment Sassafras states that it has some 62 members who live within 50 miles of the plant and that several Sassafras members engage in such activities as outings and research in areas within 50 miles. Some of the named areas are just about 50 miles away. We cannot locate the Muscatatuck National Wildlife Refuge on maps conveniently available to us and the information about the White River is too general. Clifty Falls is about 9 miles away and is probably the closest named area visited by Society members.

However, neither the body of the amendment, nor the affidavits state that the three Columbus residents engage in such outing activities or, if so, where.

It is not a very remote possibility that, when all the facts are known, the Sassafras Society will have established that one or more of its members have standing to intervene and that Sassafras has demonstrated authority to represent them. The NRC Staff does not dispute standing by Sassafras (or Valley Watch) and this is not an unreasonable position with respect to Sassafras. However, the question of whether any member of any petitioner organization has standing within the guidelines set out in the NRC decision on the subject should be a matter capable of reliable determination. The Applicant has a right to an unambiguous showing that a petitioner has standing because standing will

determine, in part, who the parties to the hearing are and what issues will be litigated. It might even determine whether any hearing whatever is held, if no other petitioner qualifies. Therefore the Board will continue to approach the issue of standing to intervene by both Valley Watch and Sassafras with very careful consideration. See Cincinnati Gas and Electric Company (Zimmer), ALAB-305, 3 NRC 8, 12 (1976).

We will also require additional information from the Sassafras Society before we make a final determination. When a prehearing conference is scheduled, the Board will require Mr. Spencer for Valley Watch to appear. Sassafras will be required to produce one or more of the three Columbus affiants. However, either petitioner may substitute the name of another member with that member's affidavit with its supplement to its petition as directed below. Those affidavits must meet the requirements discussed in this order and the order of June 30, and the substitute affiants must also be available to attend the prehearing conference unless the Board, after considering the Applicant's and Staff's response, excuses such appearance.

Supplements to Petitions - Contentions

Pursuant to 10 CFR 2.714(b) each petitioner, including Save the Valley, shall file a supplement to its petition to intervene which shall include all the contentions the intervening petitioner seeks to have litigated. Any petitioner who fails to file a supplement with at least one contention meeting the requirements of Section 2.714 will not be

permitted to participate as a party to the proceeding. Supplemental petitions must be served on or before October 21, 1983.¹ Any party or

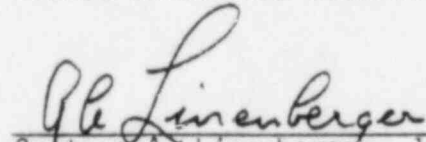
¹ Petitioners are directed to the pertinent provisions of Section 2.714(a)(1) of the NRC rules of practice which relate to the late filing of contentions:

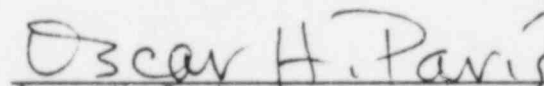
Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (d) of this section:

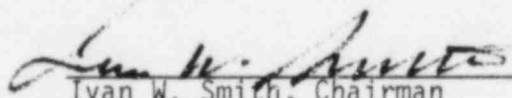
- (i) Good cause, if any, for failure to file on time.
- (ii) The availability of other means whereby the petitioner's interest will be protected.
- (iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
- (iv) The extent to which the petitioner's interest will be represented by existing parties.
- (v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

petitioner may file answers to the supplements within 20 days following the service of the supplement.

ATOMIC SAFETY AND LICENSING BOARD


Gustave A. Linenberger, Jr.
ADMINISTRATIVE JUDGE


Oscar H. Paris
ADMINISTRATIVE JUDGE


Ivan W. Smith, Chairman
ADMINISTRATIVE LAW JUDGE

Bethesda, Maryland

September 14, 1983