

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

DOCKETED
USNRC

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Before Administrative Judges: OFFICE OF SECRETARY
Morton B. Margulies, Chairman DOCKETING & SERVICE
Ernest E. Hill BRANCH
Dr. Paul W. Purdom

SERVED AUG 26 1983

In the Matter of
DUQUESNE LIGHT COMPANY, ET AL.
(Beaver Valley Power Station,
Unit 2)

Docket No. 50-412
ASLBP No. 83-490-04 OL
August 26, 1983

MEMORANDUM AND ORDER
(Lockstet Late Filed Petition To Intervene)

The Nuclear Regulatory Commission had published on June 1, 1983, in the Federal Register a notice of opportunity for hearing in the captioned proceeding involving an operating license for a nuclear power plant. The notice required that requests for hearing and petitions for leave to intervene be filed by July 1, 1983. Four timely filed petitions were received. William A. Lockstet filed a petition for hearing and leave to intervene on July 31, 1983, accompanied by a request for acceptance of the nontimely filing.

On August 12, 1983, Applicant, Duquesne Light Company filed an answer requesting that the Lockstet petition to intervene should be denied. It contended: the filing did not meet the tests for receiving a late filed petition; petitioner had failed to establish representational or other standing as of right; the test for

discretionary standing was not met; specific aspects were not set forth; and at least one contention suitable for litigation was not submitted.

Nuclear Regulatory Staff in a response of August 22, 1983 was of the position Mr. Lockstet did not address all of the factors upon which a determination is made as to whether a late filed petition is to be accepted, that petitioner should not be denied participation on the grounds of lack of standing and that Lockstet had not identified the specific aspects of the proceeding as to which he wanted to participate. Staff concluded that the petition should be denied but that Mr. Lockstet could amend the filing to cure the cited deficiencies.

The Lockstet petition was received at about the time we issued an order in this proceeding scheduling a special prehearing conference under 10 CFR 2.751a to be held at Pittsburgh, Pennsylvania on October 12 and 13, 1983. Among other matters to be considered at the conference are unresolved issues on standing and to pass upon proposed contentions yet to be received.

The Lockstet petition fails to provide information in some areas and lacks specificity in others. Because the special prehearing conference is more than a month away and matters of standing and the acceptability of contentions are still unresolved, petitioner should be afforded the opportunity of overcoming any deficiencies in the petition through amendment to or supplementing the filing. Mr. Lockstet will be permitted to do this so long as it does not unreasonably delay or disrupt the proceeding. The procedure to be followed will permit all

petitions that have been filed in this proceeding to be ruled upon at one time.

Any amendment and/or supplement Mr. Lockstet files to his petition shall to be received by the parties and Licensing Board by September 26, 1983. Applicant and Staff have ten days from the receipt of the amendment and/or supplement for service of their responses.

Petitioner has had prior experience in an agency proceeding, i.e. Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2), LBP-82-43-A, 15 NRC 1423, so that he should be aware that certain standards must be met to qualify as a party. If his petition to intervene is to be entertained in this proceeding, Mr. Lockstet must in his amended filing expressly address the factors set forth in 10 CFR 2.714(a)(1), which are weighed in determining whether a late filed petition to intervene is to be accepted. In his seeking to establish representational standing as of right based upon his 2 minor children residing within 27 miles of the plant during the school year, Mr. Lockstet must provide additional information. His address at State College is some 100 miles from where they go to school. He states the children are in part his responsibility. The nature of his guardianship of the children and their schooling in Pittsburgh should be made known.

Is the claim of representational standing based on natural guardianship? Is legal custody of the children in another person. If so, has Mr. Lockstet expressly been authorized to act in this proceeding in their behalf? Is the claim for representational standing based on the grounds that the childrens' interest conflicts with that of their

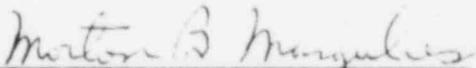
legal guardian? Specific development is required in these areas to decide the issue of representational standing.

Any amendatory filing should also include the specific aspect or aspects of the subject matter of the proceeding as to which petitioner seeks to intervene as provided for in 10 CFR 2.714(a)(2) and at least one specific contention suitable for litigation as required by 10 CFR 2.714(b).

Petitioner will be sent a copy of our order issued August 4, 1983 scheduling the special prehearing conference for October 12 and 13, 1983 at Pittsburgh, Pennsylvania at which Mr. Lockstet or his counsel must appear. Petitioner's name will be added to the service list for receipt of all documents in the proceeding.

It is so Ordered.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Morton B. Margulies, Chairman
Administrative Law Judge

Issued at Bethesda, Maryland
this 26th day of August, 1983.