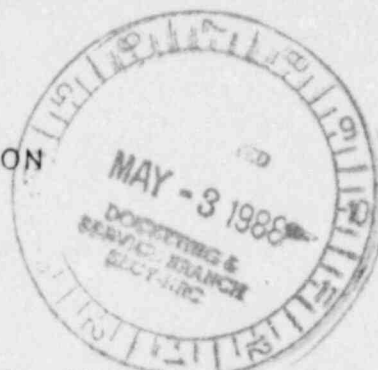


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



In the Matter of)
UNIVERSITY OF CALIFORNIA,)
BERKELEY)

Docket No. 50-224 - OLA

NRC STAFF RESPONSE TO CITY OF BERKELEY'S
PETITION TO INTERVENE AND REQUEST FOR HEARING

Joseph Rutberg
Deputy Assistant General Counsel

May 2, 1988

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I. INTRODUCTION

On March 10, 1988, the NRC published in the Federal Register a notice of consideration of proposed issuance of orders authorizing disposition of component parts and terminating facility license by the University of California, Berkeley. 53 Fed. Reg. 7,823 (March 10, 1988). The proposed orders would authorize the University of California, Berkeley (the Licensee) to dispose of the component parts of the research reactor in their possession, in accordance with the Licensee's application dated January 8, 1988. The notice offered persons whose interest might be affected by the proceeding and who wished to participate as parties in the proceeding an opportunity to file written petitions for leave to intervene by April 11, 1988.

On April 12, 1988, the City of Berkeley (City) filed a "Petition to Intervene, Request for Hearings and Further Relief."

As discussed below, the NRC staff believes that the City has set forth its interest and has identified at least one aspect within the scope of the notice on which it wishes to participate. 10 C.F.R. § 2.714(a)(2). Therefore, the City, upon the submission of an admissible contention, will

have satisfied the standards for intervention and should be granted party status. 10 C.F.R. § 2.714(b).

II. BACKGROUND

The Federal Register notice of consideration of the proposed issuance of orders sets forth the background for the action for which the Licensee has applied. The notice indicates that the first of the requested orders would be issued following the Commission's review and approval of the Licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. 53 Fed. Reg. at 7,823 (March 10, 1988). Following approval of the plan and its implementation the Commission, upon verification that acceptable radioactive contamination levels have been achieved, will issue a second order terminating the facility license and any further NRC jurisdiction over the facility. Id.

III. DISCUSSION

A. The Standards for Intervention

1. The "Interest" Requirements of 10 C.F.R. § 2.714

Section 189a of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2239(a), provides that:

In any proceeding under [the] Act, for the granting, suspending, revoking, or amending of any license . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

Section 2.714(a)(2) of the Commission's Rules of Practice, 10 C.F.R. § 2.714(a)(2), requires that a petition to intervene in a Commission proceeding set forth with particularity:

- (1) the interest of the petitioner in the proceeding;
- (2) how that interest may be affected by the results of the proceeding; and
- (3) the specific aspect of aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

In order for intervention to be granted, the petition must be found to satisfy these standards. 10 C.F.R. § 2.714(d).

In determining whether the requisite interest prescribed by both Section 189a of the Atomic Energy Act and Section 2.714 of the Commission's Rules of Practice is present, the Commission has held that contemporaneous judicial concepts of standing are controlling. Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 613-14 (1976). Thus, there must be a showing (1) that the action being challenged could cause "injury-in-fact" to the person seeking to intervene ^{1/} and (2) that such injury is arguably within the "zone of interests" protected by the Atomic Energy Act ^{2/} or

^{1/} "Abstract concerns" or a "mere academic interest" in the matter which are not accompanied by some real impact on a petitioner will not confer standing. See, Exxon Nuclear Company (Ten Applications for Low-Enriched Uranium Exports to EURATOM Member Nations), CLI-77-24, 6 NRC 525, 531 (1977); Pebble Springs, (CLI-77-27, supra, 4 NRC at 613. Rather, the asserted harm must have some particular effect on a petitioner, Ten Applications, CLI-77-24, supra, and a petitioner must have some direct stake in the outcome of the proceeding. See, Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976).

^{2/} 42 U.S.C. § 2011 et seq.

the National Environmental Policy Act. ^{3/} Id. See also, Warth v. Seldin, 422 U.S. 490 (1975); Sierra Club v. Morton, 405 U.S. 727 (1972); Association of Data Processing Service Organizations v. Camp, 397 U.S. 150, 153 (1970).

2. The "Aspect" Requirements of 10 C.F.R. § 2.714

In addition to demonstrating "interest," a petitioner must set forth "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene." 10 C.F.R. § 2.714(a)(2). ^{4/} There is little guidance in NRC case law concerning the meaning of "aspect" as the term is used in 10 C.F.R. § 2.714; however, a petitioner may satisfy this requirement by identifying general potential effects of the licensing action or areas of concern which are within the scope of matters that may be considered in the

^{3/} 42 U.S.C. § 4321 et seq.

^{4/} 10 C.F.R. § 2.714 also requires the petitioner to file ". . . a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity." This section further provides: "A petitioner who fails to file such a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party." The NRC staff will respond to the contentions set forth in the supplement after its receipt. Accordingly, nothing said here by the Staff regarding the petition's "aspects" is intended to apply in any way to satisfaction of the 10 C.F.R. § 2.714 contention requirements.

proceeding. ^{5/} See, Virginia Electric Power Co. (North Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 (1973).

B. The City of Berkeley's Petition

1. Interest and Injury

The City states that its "interest in this matter stems directly from its responsibility under law for the overall health and safety of its 108,000 residents and further from the Licensee's stated intention to depend on the City's emergency services in the event of any problems arising from the proposed decommissioning." Petition at 1. Furthermore, the City argues that since the reactor and "all the activities attendant to the proposed decommissioning are located entirely within the City gives the City the most concrete standing of any potential intervenor." Id.

The Staff believes that the City has adequately set forth its interest and has shown how its interest might be affected by the outcome of the proceeding. Accordingly, the City has made the showing necessary to a finding that it has standing to intervene. ^{6/}

2. Specific Aspects of the Subject Matter of the Proceeding

The City has identified a number of aspects on which it wishes to intervene. At least one of these aspects, that in connection with the proposed change of facility license there is no emergency plan which

^{5/} The subject matter of the proceeding for purposes of identification of "aspects" relates to the question of public health and safety of the proposed action (issuance of the order).

^{6/} Although the Petition was filed pursuant "to the Commission's Rules of Practice, 10 C.F.R. § 2.206(a) and 2.714" (Petition at 1), reference is also made to 10 C.F.R. § 2.715(c) as justification for its

takes into consideration the potential consequences of an accident (Petition at 2), is within the scope of the notice and, thus, of any proceeding that might be conducted pursuant to that notice. Accordingly, the City has properly identified at least one aspect on which it wishes to participate.

IV. CONCLUSION

For the reasons discussed above, the Commission should find that the City has established its standing to intervene and has identified at least one aspect of the proposed amendment request in which it is interested.

Respectfully submitted,


Joseph Rutberg
Deputy Assistant General Counsel

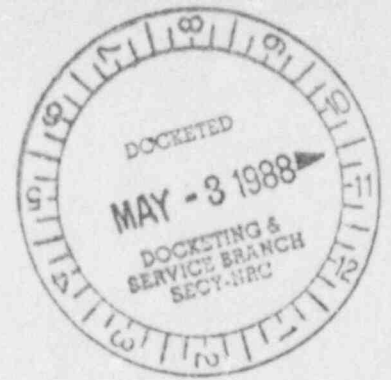
Dated at Rockville, Maryland
this 2nd day of May, 1988

(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

participation in the proceeding. Id. While § 2.715(c) provides for participation in a proceeding by a municipality, since the City seeks to participate pursuant to 10 C.F.R. § 2.714, and has met the interest and standing requirements of that section, the Staff will not address the appropriateness of the City's participation pursuant to 10 C.F.R. § 2.715(c). The City must still submit an acceptable contention in order to obtain party status. 10 C.F.R. § 2.714.

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO CITY OF BERKELEY'S PETITION TO INTERVENE AND REQUEST FOR HEARING" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or as indicated by an asterisk through deposit in the Nuclear Regulatory Commission's internal mail system, this 2nd day of May, 1988:

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Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

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Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Adjudicatory File
Atomic Safety and Licensing Board
Panel Docket
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

Atomic Safety and Licensing Appeal
Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555*

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Mr. Milton Gordon
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