

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
PENNSYLVANIA POWER & LIGHT COMPANY)
and)
ALLEGHENY ELECTRIC COOPERATIVE, INC.)
(Susquehanna Steam Electric Station,)
Units 1 and 2))

Docket Nos. 50-387 G
50-388

MEMORANDUM AND ORDER CONCERNING
PETITIONS FOR LEAVE TO INTERVENE

In response to the notice of opportunity for hearing in this operating license proceeding published on August 9, 1978 (43 Fed. Reg. 35406), four timely petitions for intervention have been received. In addition, the Bureau of Radiation Protection, Department of Environmental Resources, of the Commonwealth of Pennsylvania seeks to participate as an "interested State" pursuant to 10 CFR §2.715(c). This Board has been established to rule on these petitions (43 Fed. Reg. 45482 (October 2, 1978)).

1. Under the Commission's Rules of Practice, the first prerequisite of a petition for leave to intervene is a satisfactory demonstration of the petitioner's standing. A petition must set forth, with particularity, both

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the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. 10 CFR §2.714(a)(2). Where the petitioner is an organization purporting to represent the several interests of its members, it must identify at least one of its individuals members with an interest in the proceeding who wishes to be represented by the organization. Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422-23 (1976); Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 489 (1976); Duquesne Light Co. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 244 n. 2 (1976).

Applying these principles to the petitions before us, we conclude that three have satisfactorily demonstrated that the petitioners have standing. The fourth needs further supplementation in one respect; but, subject to our receipt of that supplementation, we conclude that it too satisfies the standing requirements.

a. The petitions filed by Colleen Marsh (on behalf of herself and 11 other individuals) and by the Susquehanna Environmental Advocates (SEA) each assert health and safety (as well as environmental) concerns and identify

individuals (in the case of SEA, members thereof) residing or conducting substantial activities in reasonable proximity to the site. The Applicants and NRC Staff both acknowledge that these petitions include an adequate demonstration of standing. We agree.

b. The petition of the Citizens Against Nuclear Danger (Citizens) also asserts health and safety and environmental effects of facility operation on the interests of the organization's members as a basis for standing, but it fails to specify the particular members who would be affected. It does include the name and address of the Citizens' chairperson. The Applicants characterize this statement of interest as "marginally" satisfactory, but the Staff deems it inadequate for failure to identify any individual whose interest may be affected and who wishes to be represented by the Citizens.

We would tend to agree with the Applicants' finding of marginal compliance with the requirements of 10 CFR §2.714(a). But the need to determine whether the asserted deficiencies pointed to by the Staff are fatal has been obviated by the filing by the Citizens, under date of October 12, 1978, of a supplemental petition designed to clarify that organization's interest. The

supplement specifically supplies the names and addresses of a number of members who ask us to permit the Citizens to intervene in this proceeding. Whatever be the validity of the Staff's objections to the original petition, the asserted deficiencies have been cured. We find the Citizens to have demonstrated satisfactory standing to intervene herein.

c. The petition of the Environmental Coalition on Nuclear Power (ECNP) presents a somewhat more complex question regarding the adequacy of the interest advanced by that organization. ECNP has submitted a handwritten letter dated August 21, 1978 and a typewritten petition dated September 5, 1978.^{1/} Both documents reflect public health and safety and environmental concerns of certain ECNP members assertedly living within 25 miles (letter) or within five to forty miles (petition) of the facility, but neither identifies any such member or includes an authorization of

^{1/} The August 21 letter, inter alia, requested an extension of time for ECNP to file its petition. Because the September 5, 1978 petition was in any event timely, the request for the extension of time has become moot and is hereby dismissed for that reason. As recently modified, the Commission's rules permit amendment of an intervention petition as a matter of course up to 15 days prior to the first prehearing conference. 10 CFR §2.714(a)(3) (effective May 26, 1978).

ECNP to represent that member. But the petition notes that an affidavit authorizing representation and setting forth interest on the basis of residence was being filed separately by some members of ECNP.

The Applicants and Staff each oppose the ECNP petition because of its failure to identify the particular members whose interests would be affected and who wished to be represented by ECNP. The Applicants note that a further affidavit was to be filed but indicate that (as of September 20, 1978) they had not yet received it. The Staff's response dated September 25, 1978 makes no reference to any such affidavit. However, on September 13, 1978, the Commission received an affidavit of seven individuals which did not identify those individuals as members of ECNP but which did authorize either of the two Co-Directors of ECNP (Dr. Judith H. Johnsrud, who had signed the ECNP petition, or Dr. Chauncey Kepford, whom the petition identifies as another authorized representative of ECNP) to represent them in the proceeding.

If the September 13, 1978 affidavit be the one referred to in the ECNP petition, ECNP should so advise the Board. It can do so by informing us whether

the seven individuals are ECNP members. If they indeed are ECNP members, the affidavit would appear to cure the deficiencies pointed to by the Applicants and Staff in opposing the ECNP petition. Subject to our receipt of such advice, we conclude that ECNP has demonstrated an adequate interest in this proceeding.

2. In addition to a statement of interest, a petition must include a list of the contentions which the petitioner seeks to have litigated, and the bases for each contention set forth with reasonable specificity. 10 CFR §2.714(b). This requirement may be satisfied at any time up to 15 days prior to the holding of the first prehearing conference. Ibid. To be admitted as a party, a petitioner must fulfill this requirement with respect to at least one contention. Ibid.

Of the four petitions, only that of Colleen Marsh includes what might be deemed to be contentions. The Applicants and Staff have reserved comments on the contentions of any of the petitioners because of the unqualified right of those petitioners to supplement or amend their contentions.

Given this state of the record, we withhold judgment at this time on the adequacy of any contention. Such judgment will await our consideration of these matters at a prehearing conference. As indicated previously, the petitioners may still file supplements to their petitions which spell out or particularize contentions or the bases for contentions.

3. It is this Board's present intention to schedule its first prehearing conference during January, 1979. The time and place of such conference will be announced in a subsequent order. Not later than 15 days prior to such conference, the petitioners will be required to submit a statement of their contentions and the bases therefor. At that time, ECNP should submit the further statement regarding its members' interests to which we earlier referred. The Applicants and/or Staff are urged to meet with the various petitioners prior to that time to attempt to agree as to which contentions, if any, are suitable for litigation in this proceeding. To the extent that the Applicants may agree that a contention is suitable, the interested persons or parties may wish to commence informal discovery efforts with respect thereto prior to the prehearing conference.

Pending our receipt and consideration of the petitioners' contentions, we reserve judgment on the various intervention petitions.

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 26th day of October, 1978.