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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of )  
)  
TEXAS UTILITIES ELECTRIC )  
COMPANY, et al. )  
)  
(Comanche Peak Steam Electric )  
Station, Unit 1) )

Docket No. 50-445-CPA

NRC STAFF'S ANSWER TO PETITIONS FOR LEAVE  
TO INTERVENE FILED BY CASE AND MEDDIE GREGORY

I. INTRODUCTION

On April 7, 1986, petitions for leave to intervene were filed by Citizens Association for Sound Energy (CASE) and Meddie Gregory in connection with the NRC Staff's February 10, 1986 Order extending the completion date for Construction Permit No. CPPR-126 for Comanche Peak Unit 1. See, 51 F.R. 5622, February 1, 1986. CASE's petition was filed pursuant to the direction of the Atomic Safety and Licensing Board. Petitioner Gregory's petition, on the other hand, is presumably filed in response to the Order itself.

For the reasons discussed below, the NRC Staff opposes the petitions.

II. BACKGROUND

After evaluation of the Applicants' request of January 29, 1986, the NRC staff, on February 10, 1986, issued an Order extending Construction Permit No. CPPR-126 for Comanche Peak Unit 1 until August 1, 1988.

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Following submissions by CASE, on January 31 and February 11, 1986, of requests for, among other things, a hearing, the Commission, on March 13, 1986, issued a Memorandum and Order, CLI-86-04, which, inter alia, referred CASE's hearing request to the Chairman of the Atomic Safety and Licensing Board Panel for appointment of an Atomic Safety and Licensing Board to consider the request and conduct any necessary hearing. On March 20, 1986, a Licensing Board was appointed. 51 F.R. 10480.

On March 21, 1986, the Licensing Board, by telephone calls to each of the participants individually, directed that CASE file a petition for leave to intervene and contentions in regard to the extension granted by the Staff's Order. To the best of the Staff's knowledge, the petition later submitted by Petitioner Gregory was not discussed during the call.

### III. DISCUSSION

#### A. The Standards for Intervention

##### 1. Petitioners Must Meet 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 or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

In order for intervention to be granted, the Atomic Safety and Licensing Board designated to rule on petitions to intervene and/or requests for hearing must find that the petition satisfies these standards. <sup>1/</sup>

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 <sup>2/</sup> and (2) that such injury is arguably within the "zone of

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<sup>1/</sup> Intervention may also be granted as a matter of discretion to a petitioner who is not entitled to intervention as a matter of right if the petitioner can show that the Commission's specific criteria weigh in favor of discretionary intervention. See Portland General Electric Company, et al. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). Since, the instant petitioners have not addressed these criteria, which is their burden (Nuclear Engineering Company (Sheffield, Illinois, Low-Level Radiation Waste Disposal Site), ALAB-473, 7 NRC 737, 745 (1978)), discretionary intervention will not be discussed further.

<sup>2/</sup> "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 In the Matter of Ten Applications for Low-Enriched Uranium Exports to EURATOM Member Nations, CLI-77-24, 6 NRC 525, 531 (1977); Pebble Springs, CLI-76-27, supra, 4 NRC at 613. Rather the asserted harm must have some particular effect on a petitioner, Ten Applications, CLI-77-24, supra,

interests" protected by the Atomic Energy Act <sup>3/</sup> of the National Environmental Policy Act. <sup>4/</sup> 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, Inc. v. Camp, 397 U.S. 150, 153 (1970). Close proximity of a petitioner's residence, standing alone, is sufficient to satisfy the interest requirements. Virginia Electric and Power Company (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54, 56 (1979).

An organization may gain standing to intervene based on injury to itself. Edlow International Company, CLI-76-6, 3 NRC 563, 572-74 (1976). If the organization seeks standing on its own behalf, it must establish that it will be injured and that the injury is not a generalized grievance shared in substantially equal measure by all or a large class of citizens. Ten Applications, CLI-77-24, supra, at 531. On the other hand, an organization may establish standing through members of the organization who have an interest which may be affected by the outcome of the proceeding. Public Service Co. of Indiana, Inc. (Marble Hill Nuclear Generating Station, Units 1 and 2), ALAB-322, 3 NRC 328, 330 (1976). When an organization claims that its standing is based on the

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(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

and a petitioner must have some direct stake in the outcome of the proceeding. See Allied-General Nuclear Services, et al. (Barnwell Fuel Receiving and Storage Station), ALAB-328, 3 NRC 420, 422 (1976).

<sup>3/</sup> 42 U.S.C. § 2011 et seq.

<sup>4/</sup> 42 U.S.C. § 4321 et seq.

interests of its members, the organization must identify one or more individual members (by name and address) whose interests may be affected and give some concrete indication that such members have authorized the organization to represent their interests in the proceeding. Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 393-97 (1979); Public Service Electric and Gas Company (Salem Nuclear Generating Station, Units 1 and 2), ALAB-136, 6 AEC 487, 488-89 (1973); Duquesne Light Company, et al. (Beaver Valley Power Station, Unit No. 1), ALAB-109, 6 AEC 243, 244 at n.2 (1973). Specific representational authorization of a member with personal standing is not required where the sole or primary purpose of the petitioning organization is to oppose nuclear power in general or the particular facility at bar. Allens Creek, ALAB-535, supra, at 396. <sup>5/</sup>

2. Petitioners Must Meet the "Aspect" Requirements of 10 C.F.R. § 2.714

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<sup>5/</sup> Further, under Section 2.713 of the Commission's Rules of Practice, a "partnership, corporation or unincorporated association may be represented by a duly authorized member or officer, or by an attorney-at-law." 10 C.F.R. § 2.713(b) (emphasis added). Thus, where an organization is represented by one of its members, the member must demonstrate authorization by that organization to represent it. It is clear that groups may not represent persons other than their own members, and individuals may not assert the interest of other persons. Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LBP-77-11, 5 NRC 481, 483 (1977); Watts Bar, ALAB-413, supra at 1421; Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit No. 2), ALAB-470, 7 NRC 473, 474 n.1 (1978). There is, under the Atomic Energy Act and the Commission's regulations, no provision for private attorneys general. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), ALAB-333, 3 NRC 804, 806 n.6 (1976); Long Island Lighting Company, LBP-77-11, supra, at 483.

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).<sup>6/</sup> While there is little guidance in NRC case law as to the meaning of "aspect" as the term is used in 10 C.F.R. § 2.714, it appears that 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 proceeding.<sup>7/</sup> See North Anna, ALAB-146, supra, at 633; Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), Licensing Board "Memorandum and Order Ruling on Petitions and Setting Special Prehearing Conference", dated September 21, 1979, slip. op. at 6 (unpublished Order).

B. The Petitions

With respect to CASE's petition, the Staff does not contest its standing to intervene in this proceeding. Furthermore, the Staff believes that

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<sup>6/</sup> 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 petitions in Section C below.

<sup>7/</sup> 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 amendments) and not the procedural determination made by the Commission staff concerning whether or not the proposed action involves a "significant hazards consideration." See 48 Fed. Reg. 14864, 14865 (April 6, 1983).

CASE, by its contentions, <sup>8/</sup> has adequately set forth the "aspects" of the proceeding on which it wishes to participate, i.e., whether "good cause" has been shown, although the Staff does not agree that the contentions are properly within the scope of a construction permit extension proceeding, as defined by the Commission's decision in Washington Public Power Supply System (WPPSS Nuclear Projects Nos. 1 and 2), CLI-82-29, 16 NRC 1221 (1982); see Comanche Peak, CLI-86-04, slip op. at 11, 14. CASE's contentions are discussed in Section C below.

Subject to the same reservations noted above with respect to aspects and contentions, the Staff does not contest the standing of Meddie Gregory to participate in the construction permit amendment proceeding. Ms. Gregory's contentions are also discussed in Section C below.

#### C. Contentions

The scope of contentions properly considered in the context of a construction permit extension proceeding is narrow. Contentions must be limited to issues regarding whether the applicant has shown "good cause" for the delay in completion of the facility. WPPSS, CLI-82-29, supra; Public Service Co. of New Hampshire (Seabrook Station, Unit 2), CLI-84-6, 19 NRC 975 (1974). A contention must seek to "challenge the reasons for the delay [or] . . . to show that other reasons, not constituting good cause, are the principal reasons for the delay."

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<sup>8/</sup> Consistent with the date set for the prehearing conference, both CASE and Ms. Gregory have, as part of their respective petitions, submitted contentions. See, 10 C.F.R. § 2.714(b).

WPPSS, CLI-82-29, supra, 16 NRC at 1230. As explained by the Appeal Board:

We refined the Commission's guidance into a two-pronged test for determining whether a contention is within the scope of a permit extension proceeding. "First, the construction delays at issue have to be traceable to the applicant. Second, the delays must be 'dilatory'." We defined 'dilatory' for such purposes as the "intentional delay of construction without a valid purpose." The Commission endorsed our promulgation of this test in its Seabrook opinion. In doing so, it noted that delay for financial reasons constitutes a valid business purpose. Applying the test, the Commission ruled out "questions about the need for power, cost of completion and financial consequences to both the utility and to the ratepayers."

Washington Public Power Supply System (WPPSS Nuclear Project No. 1), ALAB-771, 19 NRC 1183, 1189-1190 (1984; footnotes omitted); see also, Washington Public Power Supply System (WPPSS Nuclear Project No. 2), ALAB-722, 17 NRC 546, 551-553 (1983).

With respect to issues going beyond "good cause", the Commission has determined that "the avenue afforded for the expression of health, safety, and environmental concerns in any pending operating license proceeding, or, in the absence of such a proceeding, in a petition under 10 C.F.R. § 2.206, would be exclusive despite the pendency of a construction permit extension request." WPPSS, CLI-82-29, supra, 16 NRC at 1229, (footnote omitted). It has been emphasized that "permit extension proceedings are not intended to permit "periodic relitigation of health, safety, or environmental questions . . . between the time a construction permit is issued and the time the facility is authorized to operate." WPPSS, ALAB-771, supra, 19 NRC at 1189 (footnote omitted).

Viewed in light of the foregoing, we address CASE's contentions. The first five contentions raised (Petition at 2-4) are conceded by CASE

itself, to go beyond the scope of issues properly admitted in a construction permit proceeding, Petition at 2. Thus, no further discussion is required here.

Contention 6 (Petition at 4-5), which alleges that the Applicants were dilatory and, for that reason, failed to complete Unit 1 within the time provided by the construction permit, superficially might appear to raise issues which are admissible in a construction permit extension proceeding. But the Commission has concluded that the admission of contentions of the type asserted by CASE here:

would be contrary to the overall intent of the Atomic Energy Act and the Commission's regulations. If the permit holder were to construct portions of a facility in violation of NRC regulations, when those violations are detected and corrections ordered or voluntarily undertaken, there is likely to be some delay in the construction caused by the revisions. Nonetheless, such delay, as with delay caused by design changes, must give "good cause" for an extension. To consider it otherwise would discourage permit holders from disclosing and correcting improper construction for fear that corrections would cause delays that would result in a refusal to extend a construction permit, a result obviously inconsistent with the Commission's efforts to ensure the protection of the public health and safety. This contention thus is not litigible.

WPPSS, CLI-82-29, supra, 16 NRC at 1230-1231. CASE presents no basis for distinguishing its proposed Contention 6 from the foregoing holding, and, consequently, it should be rejected.

Contention 7 (Petition at 5-8) seeks to raise issues going to the Applicants' ability to properly complete the facility in conformance with the Commission's regulations, in particular, challenging the sufficiency of the ongoing CPRT efforts. This issue relates principally to matters more appropriately considered in the context of the operating license

proceeding rather than to the Applicants' "good cause" showing in support of its construction permit extension request. Accordingly, Contention 7 should be rejected.

Contention 8 similarly should be rejected. That additional time beyond the extension recently granted may be required to complete the facility is not properly at issue in this proceeding; CASE makes no claim that the extension requested and granted will in any way frustrate the NRC's "regulatory oversight." WPPSS, ABAB-771, supra, 19 NRC at 1191-1192. At most, this contention speculates, without basis, on the outcome of the ongoing activities of the Applicants and CPRT, issues which may be addressed in the operating license proceeding but not in a construction permit extension proceeding.

Contention 9 (Petition at 9-10) seeks to raise environmental issues. This contention should be rejected for lack of basis and specificity as well as on grounds that it exceeds the scope of matters coming within the ambit of a construction permit extension proceeding. The issues raised by CASE do not encompass environmental concerns associated with the extension of the construction permit but, rather, speculate on impacts which might result from the ultimate failure to obtain an operating license for the unit, or which go to the consideration of alternatives assessed at the initial construction permit stage and which, therefore, are more appropriately raised by a petition filed pursuant to 10 C.F.R. § 2.206. See, WPPSS, ALAB-771, supra, at 1189-1191.

The contentions put forward by Ms. Gregory are virtually identical to CASE's contentions 6, 7, 8 and 9. Accordingly, the Staff's response

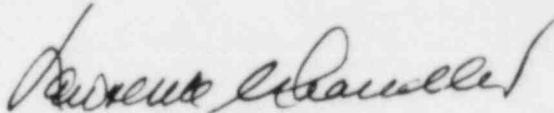
to CASE's contentions, above, sufficiently addresses Ms. Gregory's contentions, as well, and will not be reiterated at this point.

In sum, both CASE's and Ms. Gregory's petitions fail to set forth at least one contention within the scope of this proceeding which satisfies the requirements of 10 C.F.R. § 2.714(b).

#### IV. CONCLUSION

For the foregoing reasons, the Staff opposes the petitions for leave to intervene filed by CASE and Meddie Gregory and urges that they be denied.

Respectfully submitted,



Lawrence J. Chandler  
Special Litigation Counsel

Dated at Bethesda, Maryland  
this 18th day of April, 1986

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
TEXAS UTILITIES ELECTRIC ) Docket No. 56-445-CPA  
COMPANY, et al. )  
 )  
(Comanche Peak Steam Electric )  
Station, Unit 1 )

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF ANSWER TO PETITIONS FOR LEAVE TO INTERVENE FILED BY CASE AND MEDDIE GREGORY" 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, or as indicated by two asterisks (\*\*) by express mail or hand delivery, this 18th day of April, 1986:

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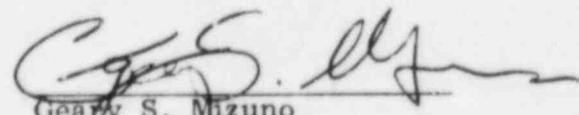
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