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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & RECORDS
BRAND

In the Matter of)	
)	
Vermont Yankee Nuclear Power)	Docket No. 50-271-OLA
Power Corporation)	
)	
(Vermont Yankee Nuclear Power)	
Station))	

NRC STAFF RESPONSE TO PETITION TO INTERVENE
FILED BY MASSACHUSETTS ATTORNEY GENERAL

I. INTRODUCTION

On December 31, 1986, the Nuclear Regulatory Commission published in the Federal Register (51 Fed. Reg. 47,324) a notice entitled, "Vermont Yankee Nuclear Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The notice concerned Vermont Yankee Nuclear Power Corporation's (the Licensee) April 26, 1986 application for an amendment to its operating license for the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont. The proposed amendment would revise the Vermont Yankee Technical Specifications to authorize the Licensee to increase the storage capacity of the spent fuel pool from 2000 fuel assemblies to 2870 assemblies.

The notice also stated that on June 18, 1986, the Commission had issued a Bi-weekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations (51 Fed. Reg. 22,226), which included notice concerning the proposed amendment of the

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Vermont Yankee license. The notice of June 18, 1986 included the Commission's proposed determination that the requested amendment involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination and offered an opportunity for the Licensee to request a hearing on the amendment and for persons whose interest might be affected to petition for leave to intervene. It failed, however, to provide the notice required by the Commission's regulation implementing Section 134 of the Nuclear Waste Policy Act of 1982, i.e. 10 C.F.R. § 2.1107. Section 2.1107 requires that the notice of proposed action published in the Federal Register concerning an application for an amendment to allow expansion of spent fuel pool storage capacity identify the availability of hybrid hearing procedures. The Commission's notice of December 31, 1986 supplied the information regarding hybrid hearing procedures required by 10 C.F.R. § 2.1107 and stated that any person whose interest might be affected and who wished to invoke the hybrid hearing procedures should file a written petition for leave to intervene.

On January 30, 1987, Massachusetts Attorney General James M. Shannon filed a "Request for Hearing and Petition to Intervene With Respect to Vermont Yankee's Spent Fuel Pool Expansion Request" (petition). In his petition, the Attorney General requests a hearing in accordance with the notice of December 31, 1986, and with the hybrid hearing procedures set forth there. Petition at 1. He also requests intervention in the proceeding pursuant to 10 C.F.R. § 2.714 and § 2.715(c). Id. The NRC staff's response to the Attorney General's petition is set forth below.

II. DISCUSSION

The Attorney General requests a hybrid hearing. The requirements of 10 C.F.R. § 2.714 are applicable to hybrid hearings. 10 C.F.R. § 2.1107. Only parties may request the hybrid procedures. However, the Attorney General's request is pursuant to the Commission's renote of December 31, 1986, limiting timely petitions to those seeking to invoke the hybrid procedures.

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 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. ^{1/}

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 ^{2/} and (2) that such injury is arguably within the "zone of interests" protected by the Atomic Energy Act ^{3/} or

^{1/} 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 (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 616 (1976). Since the Attorney General has not addressed these criteria, which is his 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.

^{2/} "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-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, 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).

^{3/} 42 U.S.C. § 2011 et seq.

the National Environmental Policy Act. ^{4/} 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). ^{5/} While 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, 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. ^{6/} See, Virginia Electric and Power Company (North

^{4/} 42 U.S.C. § 4321 et seq.

^{5/} 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 supplements after their receipt. Accordingly, nothing said herein by the Staff regarding "aspects" is intended to apply in any way to the petitioner's satisfaction of the 10 C.F.R. § 2.714 contention requirements.

^{6/} 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 amendment) and not the procedural determination made by the Commission staff concerning whether or not the proposed action involves a "significant hazards consideration." See, 51 Fed. Reg. 7744 (March 6, 1986).

Anna Power Station, Units 1 and 2), ALAB-146, 6 AEC 631, 633 (1973); 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).

3. Participation by a Nonparty Interested State

In addition to the Commission's regulation providing for intervention, 10 C.F.R. § 2.714, the Commission's regulations also permit participation pursuant to 10 C.F.R. § 2.715 by a person not a party. Section 2.715(c) provides that the presiding officer will afford representatives of an interested State, county, municipality and/or agencies thereof a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, and advise the Commission without requiring the representative to take a position with respect to the issue.

E. The Attorney General's Petition

1. Interest and Standing

Attorney General Shannon states that he seeks intervention on behalf of the citizens of the Commonwealth of Massachusetts. Petition at 1. He further states that several Massachusetts communities are located within ten miles of the Vermont Yankee facility and that a large portion of the Commonwealth lies within fifty miles. Id. He asserts that the health and safety of Massachusetts citizens could be affected by the outcome of the proceeding. Petition at 1-2.

The Staff believes that Attorney General Shannon has properly established Massachusetts' interest and has shown how its interest might be affected by the outcome of the proceeding. Thus, he has made the

showing necessary to a finding that Massachusetts has standing to intervene.

2. Specific Aspects of the Subject Matter of the Proceeding

Attorney General Shannon's petition identifies an aspect of the proceeding on which he wishes to intervene; that aspect concerns the Attorney General's allegation that an increase in the number of fuel assemblies stored in the pool would necessarily lead to an increased radiological release in the event of an accident involving the spent fuel pool. The Staff believes that Attorney General Shannon's petition sets forth a specific aspect of the proposed amendment.

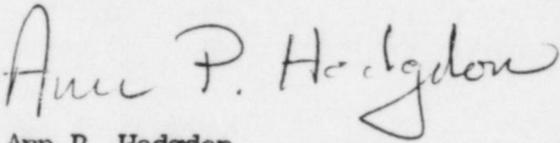
3. Participation by a Person not a Party

A State's participation under 10 C.F.R. § 2.715(c) on issues in a proceeding not raised by its own contentions is not precluded by the State's intervention as a party pursuant to 10 C.F.R. § 2.714. USERDA (Clinch River Breeder Reactor Plant), ALAB-354, 4 NRC 383 (1976); Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1), LEP-82-19, 15 NRC 601, 617 (1982). However, a party admitted as an interested state under 10 C.F.R. § 2.715(c) may not reserve the right to intervene later under § 2.714. Consolidated Edison Co. of New York (Indian Point, Unit No. 2) and Power Authority of the State of New York (Indian Point, Unit No. 3), LEP-82-25, 15 NRC 715, 723 (1982). The Licensing Board should find that the Attorney General has shown standing and has identified a specific aspect. Thus, he would be entitled to full party status if he timely submits at least one admissible contention.

III. CONCLUSION

As discussed above, the NRC staff believes that the Attorney General's petition satisfies the standing and "aspect" requirements of § 2.714. In addition, Attorney General Shannon may also participate in the proceeding on behalf of the Commonwealth under § 2.715(c).

Respectfully submitted,

A handwritten signature in cursive script that reads "Ann P. Hodgdon". The signature is written in dark ink and is positioned above the printed name and title.

Ann P. Hodgdon
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 18th day of February, 1987

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE LICENSING BOARD

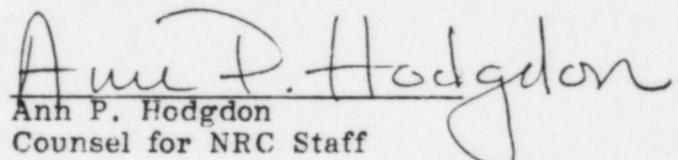
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Power Corporation)
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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney enters an appearance in the above-captioned matter. In accordance with § 2.713(b), 10 C.F.R., Part 2, the following information is provided:

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Names of Party NRC Staff

Respectfully submitted,


Ann P. Hodgdon
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 18th day of February, 1987

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO PETITION TO INTERVENE FILED BY NEW ENGLAND COALITION ON NUCLEAR POLLUTION", "NRC STAFF RESPONSE TO PETITION TO INTERVENE FILED BY THE STATE OF VERMONT", "NRC STAFF RESPONSE TO PETITION TO INTERVENE FILED BY MASSACHUSETTS ATTORNEY GENERAL" and "NOTICE OF APPEARANCE" (for Ann P. Hodgdon) 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 18th day of February, 1987:

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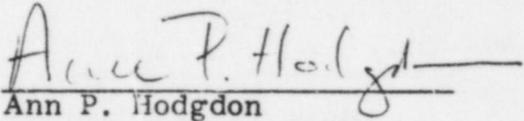
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