RAS 3989

February 28, 2002
DOCKETED 03/01/02

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
TENNESSEE VALLEY AUTHORITY	)	Docket Nos. 50-327 and 50-328
	)	Docket No. 50-390
(Sequoyah Nuclear Plant, Units 1 and 2)	)	(Consolidated)
	)	
(Watts Bar Nuclear Plant, Unit 1)	)	

NRC STAFF'S ANSWER TO
JEANNINE HONICKER'S AMENDED PETITION TO INTERVENE

INTRODUCTION

Pursuant to 10 C.F.R. § 2.714(c), the staff of the Nuclear Regulatory Commission ("Staff") hereby submits its answer to the amended petition to intervene filed by Ms. Jeannine Honicker.[1] For the reasons set forth below, the Staff concludes that notwithstanding the additional information provided by Ms. Honicker in her amended petition, she has still failed to demonstrate standing, and also has failed to demonstrate that she should be granted discretionary intervention in connection with these consolidated license amendment proceedings.

[1] Jeannine Honicker's Amended Petition to Intervene in the Hearing for a License Amendment for TVA to Produce Tritium at Sequoyah and Watts Bar (Feb. 14, 2002). The Memorandum and Order (Feb. 7, 2002), issued by the Atomic Safety and Licensing Board (Board), provided for the filing of amended petitions to intervene by February 21, 2002.

BACKGROUND

These proceedings involve two license amendment applications submitted by the Tennessee Valley Authority (TVA), the licensee for the Sequoyah Nuclear Plant, Units 1 and 2 (Sequoyah), and the Watts Bar Nuclear Plant, Unit 1 (WB). In the applications, dated August 20, 2001 (for WB), and September 21, 2001 (for Sequoyah), TVA requested license amendments that would allow TVA to insert up to a certain number of tritium producing burnable absorber rods (TPBARs), which contain no fissile material, into the reactor cores. The proposed amendments are related to an agreement between TVA and the U.S. Department of Energy (DOE) under which TVA will provide certain irradiation services to DOE. DOE plans to transport the irradiated TPBARs to its Savannah River site in Georgia for defense purposes, but the transportation activities by DOE are not the responsibility of TVA and are not the subject of the pending amendment requests. On December 17, 2001, the Staff published in the *Federal Register* two separate notices of the amendment requests and of an opportunity for a hearing. 66 Fed. Reg. 65,000 (2001) and 66 Fed. Reg. 65,005 (2001). Pursuant to the notices, Ms. Honicker filed a petition for leave to intervene with respect to both facilities.[2] The Staff filed its answer to the petition on January 31, 2002,

[2]Letter from Jeannine Honicker to Chief, Rules & Directive[s] Branch, U.S. Nuclear Regulatory Commission (Jan. 14, 2002).

concluding that Ms. Honicker had not demonstrated standing.[3] Ms. Honicker filed her amended petition on February 14, 2002.[4]

DISCUSSION

I. Legal Requirements for Intervention

Any person who requests a hearing or seeks to intervene in a Commission proceeding must demonstrate that it has standing to do so. Section 189a.(1) of the Atomic Energy Act of 1954, as amended ("Act" or "AEA"), 42 U.S.C. § 2239(a), states:

> In any proceeding under this Act, for the granting, suspending, or amending of any license . . . , the Commission shall grant a hearing upon the request of *any person whose interests may be affected by the proceeding*, and shall admit any such person as a party to such proceeding."

(Emphasis added).

The Commission's regulations in 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, *inter alia*, "shall set forth with particularity the interest of the petitioner in the proceeding, [and] how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular

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[3]NRC Staff's Answer to Requests for Hearing and Leave to Intervene Filed By Blue Ridge Environmental Defense League and Ms. Jeannine Honicker (Jan. 31, 2002). TVA also filed an answer with the same conclusion. *See* Tennessee Valley Authority's Answer to Request for a Hearing and Petition to Intervene of Jeannine Honicker (Jan. 28, 2002).

[4]Although replies are not provided for in 10 C.F.R. § 2.714, Ms. Honicker also filed a reply to the Staff's January 31, 2002 answer. *See* Jeannine Honicker's Response to NRC Staff's Answer to Request For Hearing and Leave to Intervene (Feb. 2, 2002). Perhaps due to remaining problems with receiving mail, the agency did not log in Ms. Honicker's reply until February 15, 2002, and Staff counsel did not receive it through internal distribution until February 21, 2002. Accordingly, the Staff did not immediately raise an issue as to whether Ms. Honicker's reply should be disregarded. However, since most or all of Ms. Honicker's reply appears to be incorporated into her amended petition, the Staff believes that its answer here need focus only on the latter filing in any event.

reference to the factors set forth in [§ 2.714(d)(1)]." Pursuant to section 2.714(d)(1), in ruling on a petition for leave to intervene or a request for hearing, the Presiding Officer or Atomic Safety and Licensing Board (Board) is to consider:

> (i) The nature of the petitioner's right under the Act to be made a party to the proceeding.
>
> (ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
>
> (iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

Under 10 C.F.R. § 2.714(a)(2), a petition for leave to intervene must also set forth "the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene." In addition, pursuant to 10 C.F.R. § 2.714(b), a petitioner must advance at least one admissible contention in order to be permitted to intervene in a proceeding.

To determine whether a petitioner has established the requisite interest, the Commission has traditionally applied contemporaneous judicial concepts of standing. *See, e.g., Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-98-21, 48 NRC 185, 195 (1998) ("Yankee Rowe").

In order to establish standing, a petitioner must show that the proposed action will cause "injury in fact" to the petitioner's interest and that the injury is arguably within the "zone of interests" protected by the statutes governing the proceeding. *Id.* In Commission proceedings, the injury must fall within the zone of interests protected by the AEA or the National Environmental Policy Act. *Quivira Mining* Co. (Ambrosia Lake Facility), CLI-98-11, 48 NRC 1, 6 (1998).

To establish injury in fact, the petitioner must establish (a) that he personally has suffered or will suffer a "distinct and palpable" harm that constitutes injury in fact; (b) that the injury can fairly be traced to the challenged action; and (c) that the injury is likely to be redressed by a favorable decision in the proceeding. *Yankee Rowe*, CLI-98-21, 48 NRC at 195, *citing Steel Co. v. Citizens for a Better Environment*, 118 S. Ct. 1003, 1016 (1998). It must be likely, rather than speculative, that a favorable decision will redress the injury. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561 (1992).

The injury must be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560. A petitioner must have a "real stake" in the outcome of the proceeding to establish injury in fact for standing. *Houston Lighting & Power Co.* (South Tex. Project, Units 1 & 2), LBP-79-10, 9 NRC 439, 447-48, *aff'd*, ALAB-549, 9 NRC 644 (1979). While the petitioner's stake need not be a "substantial" one, it must be "actual," direct" or "genuine." LBP-79-10, 9 NRC at 448. A mere academic interest in the outcome of a proceeding or an interest in the litigation is insufficient to confer standing; the requestor must allege some injury that will occur as a result of the action taken. *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 & 2), LBP-82-74, 16 NRC 981, 983 (1982), *citing Allied Gen. Nuclear Servs.* (Barnwell Fuel Receiving & Storage Station), ALAB-328, 3 NRC 420, 422 (1976); *Puget Sound Power & Light Co.* (Skagit/Hanford Nuclear Power Project, Units 1 & 2), LBP-82-26, 15 NRC 742, 743 (1982).

A person may obtain a hearing or intervene as of right on his own behalf but not on behalf of other persons whom he has not been authorized to represent. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 & 2), CLI-89-21, 30 NRC 325, 329 (1989). In general, a petitioner may assert only his own "rights or duties" under the AEA or the

National Environmental Policy Act. *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977) (a petitioner's "claim of entitlement 'to participate in any action which can endanger' her son" rejected).

Petitioners who do not meet the tests for intervention as a matter of right may still be permitted to intervene in certain limited cases. *Portland General Electric Co.* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610, 614-17 (1976). Factors to be considered weighing in favor of discretionary intervention are:

> (1) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.
> (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.
> (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest.

Factors to be considered weighing against discretionary intervention are:

> (1) The availability of other means whereby the petitioner's interest will be protected.
> (2) The extent to which the petitioner's interest will be represented by existing parties.
> (3) The extent to which petitioner's participation will inappropriately broaden or delay the proceeding.

Pebble Springs, CLI-76-27, 4 NRC at 616. In *Pebble Springs*, the Commission, in focusing on the first factor that weighs in favor of discretionary intervention, stated:

> Permission to intervene should prove more readily available where petitioners show significant ability to contribute on substantial issues of law or fact which will not otherwise be properly raised or presented, set forth these matters with suitable specificity to allow evaluation, and demonstrate their importance and immediacy, justifying the time necessary to consider them.

Id. at 617.

II. Ms. Honicker's Amended Petition For Intervention

Ms. Honicker, whose stated address is LaGrange, Georgia, acknowledges in her amended petition for intervention that she does not live within a fifty mile radius of either WB or Sequoyah.[5] She claims, however, that she "frequents the area," giving six examples. First, she states she visits her son and his family in Knoxville (she plans to spend her birthday there, and attend a concert), and while doing so, shops in Pigeon Forge, and dines in Gatlinburg.[6] Second, she states that she has "a long history of attending TVA board meetings." Third, she says she "expects" to be using libraries in Chattanooga and Knoxville, to access TVA documents which she asserts are available only there. Fourth, she states that she owns rental property in Nashville,[7] "out of the 50 mile radius" (from the facilities), but asserts that the roads (which she presumably uses) to Nashville from LaGrange are not. Fifth, she states that the roads she uses to travel from LaGrange to Knoxville are also within 50 miles of both facilities. Sixth, she states that she uses the same roads to visit her other children, who live north of Knoxville.

Ms. Honicker further states that her "interests" that would be affected by the proposed license amendments are her son and his family, who are much more valuable to her than any interest in real property, and the harm to her would be "mental anguish" brought

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[5]LaGrange is some 200 or more miles from either facility.

[6]The Staff notes that, based on an American Automobile Association Road Atlas, the closest either facility is to the center of any of the cities mentioned by Ms. Honicker is 59 miles (WB to Knoxville); Sequoyah appears to be about 86 miles from the center of Knoxville, and both Gatlinburg and Pigeon Forge, which are within 10 miles of each other, appear to be over 70 miles from WB (and further from Sequoyah).

[7]The Staff calculates Nashville to be no closer than about 100 miles from either facility, using the Road Atlas referenced above.

about by her fear of their harm. She also claims that she and her husband would be harmed if they happened to be in Knoxville, there was an accident, and they evacuated towards LaGrange or Nashville, particularly if there was a football game at the same time and the roads were more congested as a result. In addition, Ms. Honicker expresses her concern that "unless a monitoring system is installed," she would be "more likely to eat contaminated food or drink contaminated milk" while in Chattanooga, Knoxville, or even LaGrange, if the amendments are granted.

Ms. Honicker argues that she should be granted discretionary intervention, if she is not granted intervention as of right. She provides what she characterizes as "examples of how [her] participation will assist the NRC in not only establishing a record, but [in] coming to the right decision . . . ." The examples she provides are essentially questions she has previously raised or raises now, relating to whether a weld crack has been inspected, whether a reactor vessel brittleness fracture has been considered, whether calculation methods for determining radiation dose are questionable,[8] whether a plant fire with Thermo-Lag fire insulation has been considered, whether an accident from hydrogen igniters has been evaluated, whether the consequences of a failure of the ice condenser system and the containment structure have been considered, and whether the threat of a fully-fueled jetliner crash and terrorism have been considered. Ms. Honicker also questions the need for tritium production, and, if it is necessary, why it should not occur at a weapons facility such as the Savannah River site.

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[8]Ms. Honicker also asserts in her amended petition that the Staff stated in its January 31, 2002 answer to Ms. Honicker's petition to intervene that "this is an admissible contention." The Staff takes this opportunity to clarify that it has made no response to any contention as of this date.

III. Analysis

A. Standing

Ms. Honicker's amended petition initially attempts to establish that despite her residence being some 200 miles away from either facility at issue, she nonetheless is "frequently" in close proximity. The only situations that she cites where the Staff believes she would be within fifty miles of either facility are her attendance at a TVA board meeting, using a library in Knoxville to access TVA documents, and traveling on certain roads to final destinations that are well beyond fifty miles of the facilities. While Ms. Honicker states that she has a "long history" of attending TVA board meetings, it is not at all clear how frequently she has attended, and will attend, such meetings (the Staff assumes they are held in Knoxville). Similarly, there is no information provided as to how frequently she "expects" to travel to Knoxville for the purpose of accessing TVA documents, or how often or how long she uses roads that are in an unstated proximity to the facilities, to visit her family members or travel to her rental property.[9] Ms. Honicker makes no attempt to characterize the preceding as involving everyday activities or commuting. In light of the foregoing, the Staff is of the opinion that Ms. Honicker has not demonstrated that she has frequent contacts with areas in close proximity to the facilities sufficient to establish standing.[10]

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[9] *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-94-3, 39 NRC 95, 102 n.10 (1994) (allegation that petitioners live "close" to transportation routes for shipment of materials lacks sufficient particularity).

[10] Under Commission case law, when a proposed action in a power reactor context involves a "clear" or "obvious" potential for offsite consequences and a petitioner resides within a certain distance of the facility (generally fifty miles), that petitioner is presumed to have standing. *Florida Power & Light Co.* (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989); *Cleveland Electric Illuminating Co., et al.* (Perry Nuclear Power Plant, Unit 1), CLI-93-21, 38 NRC 87 (1993). In a materials context, the (continued...)

While the Staff certainly does not question Ms. Honicker's assertion that the lives of her family are much more valuable than any interest in real estate, Ms. Honicker's alleged protected interests, i.e., her son and his family members, in addition to her mental well-being, are not of a nature that would provide a basis for injury in fact. As discussed earlier, Ms. Honicker is generally limited to asserting only her rights; there is no assertion that her son has authorized Ms. Honicker to represent his or his family's interests. With respect to Ms. Honicker's mental well-being, the Commission has determined that psychological health is not cognizable under the AEA. *Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-82-6, 15 NRC 407 (1982); *see Georgia Power Co.* (Vogtle Electric Generating Plant, Units 1 and 2), ALAB-872, 26 NRC 127, 132 n.15 (1987) (psychological stress not a litigable issue in NRC licensing proceedings). Furthermore, the NRC is not required to evaluate psychological health damage under the National Environmental Policy Act). *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983). Therefore, Ms. Honicker's asserted injury to her mental well-being is not within the protected zone of interests.

Ms. Honicker's stated concerns of her husband and her being harmed if they happened to be in Knoxville and there was an accident at that same time, while evacuation

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[10](...continued)
Commission has stated that a geographic proximity presumption may apply "albeit at distances much closer than 50 miles" where there is a determination that the proposed action involves "a significant source of radioactivity producing an obvious potential for offsite consequences." *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 75 n.22 (1994). Here, the Staff is not ready to concede at this time that the amendments at issue involve a clear or obvious potential for offsite consequences, at least consequences that are more than insignificant. Thus, even if Ms. Honicker demonstrated enough frequent contacts that could be equated with residing within a fifty mile radius of the facilities, it would not necessarily follow that she has established presumptive standing based on geographic proximity alone.

routes were congested during a football game, appear to the Staff to be too speculative to constitute a basis for a finding that Ms. Honicker has standing.[11] Ms. Honicker's scenario is a far cry from a situation where one may have standing based on residing, i.e., dwelling permanently or continuously,[12] in close proximity to a facility.

As for Ms. Honicker's concern about being more likely to eat contaminated food or drink contaminated milk if the amendments are granted, at least one Licensing Board concluded that intervention would not be allowed on such a "vague" basis. *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336 (1979). *See generally Lujan*, 504 U.S. at 560. Ms. Honicker has cited no authority to the contrary.

B. Discretionary Intervention

Ms. Honicker's discussion of how she would assist in developing a sound record appears to be simply a set of questions she would pose.[13] She provides no information demonstrating that she has any particular expertise, education, or training in areas that are relevant to the amendments at issue.[14] Furthermore, she has not identified interests that

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[11]As mentioned earlier, an injury must be "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560.

[12]*See, e.g.,* Webster's Ninth New Collegiate Dictionary 1003 (1985).

[13]It is not at all clear that the questions Ms. Honicker has listed in her amended petition would even be germane to the issues being raised by the proposed amendments (e.g., she raises a question concerning Thermo-Lag fire barriers) or would even be within the scope of these proceedings (e.g., whether the threat of a jetliner crash has been considered). If anything, it would appear that Ms. Honicker's participation would "inappropriately broaden or delay the proceeding," which would weigh against granting discretionary intervention. *Pebble Springs,* CLI-76-27, 4 NRC at 616.

[14]*See, e.g., Duke Power Co.* (Catawba Nuclear Station, Units 1 and 2), LBP-81-1,
(continued...)

would be impacted by the amendments, at least under circumstances that are not wholly speculative and overwhelmingly subject to chance. Overall, Ms. Honicker has not shown that the various factors to be weighed when considering discretionary intervention tilt in favor of granting intervention.

CONCLUSION

In consideration of the foregoing, Ms. Honicker has failed to establish standing. Moreover, she has failed to establish that she should be granted discretionary intervention. Accordingly, her request for leave to intervene should be denied.

Respectfully submitted,

/RA/

Steven R. Hom
Counsel for NRC Staff

Dated at Rockville, Maryland
this 28th day of February 2002

[14](...continued)
13 NRC 27, 33 (1981).

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CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF'S ANSWER TO JEANNINE HONICKER'S AMENDED PETITION TO INTERVENE" in the above-captioned consolidated proceedings have been served on the following with listed E-mail addresses or facsimile numbers by E-mail or facsimile transmission, respectively, and on all of the following by deposit in the United States mail, first class, or as indicated by an asterisk, by deposit in the Nuclear Regulatory Commission's internal mail system, this 28th day of February, 2002.

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