

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of:)

COMMONWEALTH EDISON)
COMPANY)

(Zion Nuclear Power Station, Units 1 and 2))
_____)

Docket No. 50-295/304-LA

ASLBP No. 98-744-04-LA

**COMMONWEALTH EDISON COMPANY'S
REPLY TO PETITIONER'S AMENDED PETITION TO INTERVENE**

I. INTRODUCTION

Commonwealth Edison Company ("ComEd"), licensee in the above-captioned matter, hereby files its Reply to Petitioner Edwin D. Dienethal's Amended Petition to Intervene and Statement of Contentions ("Amended Petition") dated July 31, 1998. Pursuant to the Board's July 10, 1998, Order, ComEd's Reply is limited to whether Petitioner has demonstrated standing to intervene in this proceeding.

As will be demonstrated below, the Amended Petition fails to allege any specific offsite consequences or "injury-in-fact" resulting from the Zion Station license amendments or demonstrate how any injury might be redressed by a decision in Petitioner's favor. Since Petitioner has failed to establish standing to intervene, his Amended Petition and request for hearing must be denied.

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II. BACKGROUND

This proceeding concerns amendments to ComEd's Facility Operating Licenses for Zion Station approved by the NRC on July 24, 1998. As more fully described in ComEd's March 30, 1998, Application for Amendment to Facility Operating Licenses, these administrative amendments facilitate plant activities following the permanent shutdown and defueling of Zion Station. Specifically, the amendments withdrew the "Improved Technical Specifications" (ITS) approved by the NRC in December 1997. ComEd was not required to implement the ITS because it permanently closed the Station. These amendments were to be implemented upon the return of Zion Station Unit 2 to operational Mode 4, which did not and will not occur. Zion Station will continue to use the currently effective "Custom Technical Specifications" that were previously approved by the NRC.

The amendments also modified the Custom Technical Specifications to: (1) eliminate verbiage implying the units are operational; (2) allow the use of Certified Fuel Handlers certified under an NRC approved program to satisfy certain shift staffing requirements now that the units have been permanently shutdown and the reactors defueled; and (3) change management titles and responsibilities to reflect a new management structure appropriate for the facility. The amendments also provide staffing levels that are fully adequate to ensure safety in the permanently shutdown and defueled condition and compliance with NRC regulations.

Both ComEd and the NRC Staff opposed the initial intervention petition principally due to the Petitioner's failure to demonstrate a distinct and palpable injury traceable to the license amendments. See Commonwealth Edison Company's Answer to Petition to Intervene, at 7 (July 1, 1998) ("ComEd's Answer"); NRC Staff's Response to

the Petition for Leave to Intervene Filed by Edwin Dienethal, at 8 (July 8, 1998) (“NRC Staff Reply”). Nevertheless, the Board recognized Petitioner’s right to amend his Petition to address any shortcomings prior to the first prehearing conference. Order, at 1 (July 10, 1998). Since there were no prehearing conferences scheduled to be held in this proceeding, the Board directed Petitioner to amend his Petition no later than July 22, 1998. Id. at 2. The Board subsequently allowed Petitioner to submit the amended petition as late as July 31, 1998. Order, at 1 (July 20, 1998).

Petitioner’s Amended Petition does not cure the shortcomings of his original Petition. As explained more fully below, Petitioner's lack of standing persists because his Petition fails to set forth any distinct or palpable injury to his interests that flow from the license amendments. Rather, Petitioner uses the Amended Petition to attack the regulatory history of Zion, fabricate wholly unsupported allegations of criminal misconduct against various ComEd employees, and raise other issues completely unrelated to the license amendments and thus outside the scope of this proceeding. Therefore, the Amended Petition for leave to intervene must be denied.

III. THE NRC’s STANDING REQUIREMENTS

Each individual who seeks to intervene in a licensing proceeding must establish standing. See 10 C.F.R. Section 2.714. To comply with the NRC’s basic standing

requirements, Petitioner (Mr. Dienethal)¹ must demonstrate that: (1) he has or will suffer a distinct and palpable injury-in-fact within the zone of interest arguably protected by the governing statute; (2) his alleged injury is fairly traceable to the challenged action; and (3) his injury is likely to be redressed by a favorable decision. Yankee Atomic Electric Co. (Yankee Nuclear Power Station), LBP-96-2, 43 NRC 61, 68 (1996). See generally, Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136 (1992). As demonstrated below, the Petitioner has failed to demonstrate that he meets any of these requirements.

IV. DISCUSSION

Petitioner's argument that he has standing to intervene in this proceeding is contained in pages five through ten of his Amended Petition. Petitioner continues to assert that his geographic proximity to the plant and his activities in the general vicinity establish standing to participate in this license amendment proceeding. Additionally, Petitioner asserts a long list of "allegations" to establish standing. Amended Petition at 8. However, as discussed below, in a license amendment proceeding such as this one, proximity alone is insufficient to establish Petitioner's standing. Moreover, standing is not established by the length of a list of "allegations" that do not allege any injury flowing from the amendments. Therefore, the Petition must be dismissed.

¹ Petitioner cannot assert standing based on the Committee for Safety at Plant Zion (CSPZ) and the membership of Randy Robarge, nor Mr. Robarge's complaint with the U.S. Department of Labor. See Amended Petition at 3 and 9. Neither CSPZ nor Randy Robarge has sought to intervene and participate in this proceeding. Moreover, it is clear that they cannot establish the necessary showing for a late filed petition under 10 CFR Section 2.714(a)(1). Finally, CSPZ has made no showing of organizational

A. Geographic Proximity Is Not Sufficient to Establish Standing in this Proceeding

The thrust of Petitioner's argument for standing in this proceeding is that he resides and occasionally "recreates" in close proximity to the plant. See Amended Petition at 6. Petitioner asserts this geographic proximity establishes a presumption that his activities are "well within the plant's 'zone of harm'," and therefore, he should be allowed to intervene in this proceeding. Id. at 7.

Geographical proximity to a nuclear power plant alone, is sufficient to establish standing only where the proposed licensing action involves "construction or operation of the reactor itself, with clear implications for the offsite environment, or major alterations to the facility with a clear potential for offsite consequences." See e.g., Florida Power & Light Co. (St. Lucie Nuclear Power Plant, Units 1 and 2), CLI-89-21, 30 NRC 325, 329-30 (1989); Boston Edison Co., (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98-99, aff'd on other grounds, ALAB-816, 22 NRC 461 (1985). Absent situations involving obvious potential for offsite consequences, a petitioner must allege some specific injury-in-fact resulting from the license amendment. Florida Power and Light Co., CLI-89-21, 30 NRC at 329-330.

The cases cited by Petitioner² do not support a claim of standing in this proceeding. These cases involved proposed actions similar to issuance of an initial

standing in this instance.

² First Petitioner cites Georgia Institute of Technology (Georgia Tech Research Reactor) CLI-95-12, 42 NRC 111 (1995) for the proposition that a commuter who drives by a facility on a regular basis qualifies within the zone of harm of possible injury-in-fact. Petitioner next cites Georgia Power Co. (Vogtle Electric Generating Plant, Units 1 and 2), LBP-93-5, 37 NRC 96 (1993) for the proposition that a person who lives 7 days per month in a house located 35 miles from a nuclear power plant would have standing to intervene in a license amendment case. Finally, Petitioner cites Virginia Electric Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-522, 9 NRC 54 (1979), for the proposition that a person who lives 45 miles from a nuclear plant and canoes in the general vicinity of the plant should have standing to intervene.

operating license or major alterations of the facility. For example, Georgia Institute of Technology involved an application to renew the Facility Operating License for the Georgia Tech Research Reactor for a 20 year period; Georgia Power Co. involved the transfer of the Facility Operating License to a new operating company that would continue to operate the facility; and Virginia Electric Power Co. involved a license amendment to permit expansion of the capacity of a spent fuel pool at an operational facility. These actions created the clear potential for offsite consequences. The action reviewed by the Commission in this instance is much narrower in scope.

The Zion amendments at issue in this proceeding are administrative in nature and will not result in changes to the overall plant configuration. Zion Station was shutdown in February 1997. The reactors have been defueled and power operations permanently ceased. As a result, the scope of activities at Zion Station has been substantially reduced. See Board Notification 98-01, NRC Safety Evaluation by the Office of Nuclear Reactor Regulation Related to Amendment No. 179 to Facility Operating License No. DPR-39 and Amendment No. 166 to Facility Operating License No. DPR-48 (“SER”), at 3. The activities at Zion Station are more akin to a decommissioning nuclear power plant. The Commission has recognized that during decommissioning, the activities performed by the licensee “[d]o not have a significant potential to impact public health and safety and require . . . considerably less oversight by the NRC than during power operation.” 61 Fed. Reg. 39,278-79 (July 29, 1996) (final rule titled “Decommissioning of Nuclear Power Reactors”).

Moreover, the Commission has made the unchallenged determination that the amendments do not involve any potential offsite consequences. In its final no significant

hazards determination, the NRC stated that not only are the “spectrum of accidents and events that remain credible . . . significantly reduced, . . . the [license amendment] changes do not affect the probability or consequences of any accidents that do remain credible.”

See Board Notification 98-01, Attached SER at 2 (emphasis added).

In sum, the license amendments in this proceeding do not create clear implications for offsite consequences. Therefore, Petitioner cannot rely on geographical proximity to Zion Station alone to establish standing; he must allege some specific injury-in-fact flowing from the license amendments. As demonstrated below, Petitioner has failed to set forth any injury-in-fact traceable to the amendments, and therefore, his Amended Petition for leave to intervene must be denied.

B. Petitioner Fails to Set Forth Any Particularized Injury-In-Fact Traceable to the License Amendments for Which Relief Can Be Granted

Petitioner alleges that Zion Station poses a concrete and serious risk of future negative health effects on his wife, children, and community "by threatening the food, water, and air quality of his community." Amended Petition at 8. He further alleges that if Zion Station functions under the amendments, the risk of potential injuries to himself, his family, and Zion Station workers will be increased. Id. at 8. Petitioner asserts that “These allegations are more than sufficient to satisfy the injury-in-fact and other standing requirements to intervene.” Id. at 8.

Petitioner fails to grasp the essence of the NRC’s standing requirements. Standing is not established by recitation of a large list of “allegations.” In Yankee Atomic, the Commission instructed that standing in a license amendment proceeding such as this case is established only when the Petitioner demonstrates that he has or will suffer a distinct

and palpable injury-in-fact within the zone of interest arguably protected by the governing statute and his alleged injury is fairly traceable to the challenged action. 43 NRC at 68. The alleged injury, which may be either actual or threatened, must be both concrete and particularized, not “conjectural” or “hypothetical,” Sequoyah Fuels Corp. and General Atomics (Gore, Oklahoma Site), CLI-94-12, 40 NRC 64, 72 (1994), and the requestor must allege some injury that will occur as a result of the action taken. Florida Power and Light Co., 30 NRC at 330.

Petitioner’s assertion of general health, safety, property, and financial interests in the proceeding falls well short of this standing requirement. See Amended Petition at 9. Petitioner fails to set forth any particularized harm or injury that he might suffer as a result of the amendments and does not explain any mechanism by which harm might occur. For example, Petitioner states that “plant Zion poses a concrete and serious risk of future negative health effects on Petitioner Dienethal, his wife and children, his family, and his community by threatening the food, water, and air quality of Dienethal’s community.” Amended Petition at 8. However, such generalized assertions have repeatedly been held to be far too remote and far too generalized to provide the basis for standing to intervene. See Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), LBP-82-43A, 15 NRC 1423, 1449 (1982); Boston Edison Co. (Pilgrim Nuclear Power Station), LBP-85-24, 22 NRC 97, 98, aff’d on other grounds, ALAB-816, 22 NRC 461 (1985). Similarly, general and undefined assertions of economic injury are not sufficient to establish standing. See Babcock and Wilcox (Apollo, Pennsylvania Fuel Fabrication Facility), LBP-93-4, 37 NRC 72, 94 n. 64 (1993).

More fundamentally, Petitioner fails to establish how his “asserted injuries” are traceable to the proposed action. For example, Petitioner does not allege how the amendment will adversely affect his “property value.” Amended Petition at 9. Similarly, Petitioner does not demonstrate any increased risk of “failure to detect radiation,” due to the amendments (and can not since the amendments do not affect radiation monitoring systems at Zion). See Amended Petition at 8. Similarly, Petitioner does not allege how the amendment will affect “his use of the very roads used by Plant Zion to transport radioactive waste.” Amended Petition at 9. The amendments do not involve changes that relate to waste shipments or increase the frequency or volume of waste shipped from the site.

Finally, Petitioner fails to establish how the license amendments will cause increased risks of “LOCAs [Loss of Coolant Accident], radiological concerns, unsafe levels of radiation for employees at the plant and the general public, undetectable radiation contamination by employees, contamination of the local community and environments, increased risk of accident at Plant Zion, and contamination of Lake Michigan.” Amended Petition at 8. For example, Zion Station is permanently shutdown and the reactors are defueled, thus a LOCA is no longer a relevant accident scenario for the Station.³ Further, the amendments do not contemplate any change to system operation or maintenance. Thus, the possibility of a LOCA is not affected by the amendments. Similarly, Petitioner fails to establish any link between the amendments and his abstract allegations of

³ Loss of Coolant Accidents (LOCAs) are hypothetical accidents that result in the loss of reactor coolant from breaks in pipes in the reactor coolant pressure boundary. 10 C.F.R. 50.46(c)(1). As described in 10 C.F.R. Part 50, Appendix K, the analysis is performed assuming reactor operation at 102 percent power. A LOCA is no longer relevant to Zion Station because the reactors have been permanently shutdown and defueled.

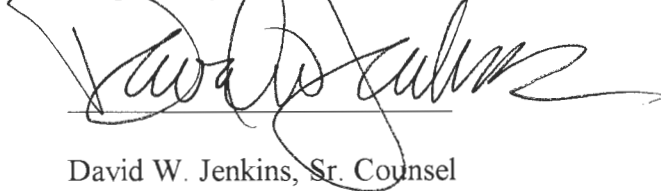
“radiological concerns,” “unsafe levels of radiation,” “undetectable radiation,”
“contamination of the local community,” “accidents at the plant,” and “contamination of
Lake Michigan.” Amended Petition at 8.

In sum, the Petitioner fails to identify with particularity any interest affected by the
amendments, and fails to indicate how the unidentified interest could be remedied by a
decision in his favor.

V. CONCLUSION

For the reasons set forth above, Petitioner’s request for intervenor status does not
satisfy the standing requirements of 10 C.F.R. Section 2.714. Accordingly, the Amended
Petition for leave to intervene must be denied. Consequently, Petitioner’s request for a
hearing must be dismissed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David W. Jenkins", is written over a horizontal line.

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Dated in Chicago, IL
This 18th day of August, 1998

CERTIFICATE OF SERVICE



I hereby certify that a copy of the foregoing Commonwealth Edison Company's Reply to Petitioner's Amended Petition to Intervene was served via postage prepaid first-class mail (and facsimile to those persons indicated by an asterisk [*]) on this 18th day of August, 1998, upon the following persons:

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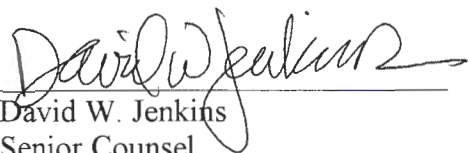
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