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ACCESSION NBR: 8009030714 DOC. DATE: 80/08/26 NOTARIZED: NO DOCKET #  
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 STN-50-529 Palo Verde Nuclear Station, Unit 2, Arizona Public 05000529  
 STN-50-530 Palo Verde Nuclear Station, Unit 3, Arizona Public 05000530

AUTH. NAME AUTHOR AFFILIATION  
 GEHR, A.C. Arizona Public Service Co.  
 BISCOFF, C.A. Arizona Public Service Co.  
 GEHR, A.C. Snell & Wilmer  
 RECIPIENT NAME RECIPIENT AFFILIATION  
 Atomic Safety and Licensing Board Panel

SUBJECT: Response in opposition to PL Hourihan, K Dahl & C Shuey  
 800811 petition to intervene. Petitioners failed to establish  
 standing or specify interest. Aspects affecting petitioners  
 not identified. W/Certificate of Svc.

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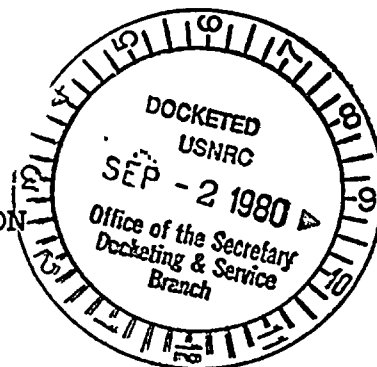
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION



In the Matter of ARIZONA )  
PUBLIC SERVICE COMPANY, et al. )  
Palo Verde Nuclear Generating )  
Station, Units 1, 2 and 3 )

Docket Nos. STN 50-528  
STN 50-529  
STN 50-530

JOINT APPLICANTS' RESPONSE TO THE REQUEST FOR HEARING  
AND PETITION FOR LEAVE TO INTERVENE BY PATRICIA LEE  
HOURIHAN, KEVIN DAHL AND CHRISTOPHER SHUEY

On August 11, 1980, joint applicants Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, El Paso Electric Company, and Public Service Company of New Mexico (the "Joint Applicants") received copies of the Request for a Hearing and Petition for Leave to Intervene ("Petition to Intervene") of Patricia Lee Hourihan, Kevin Dahl and Christopher Shuey (the "Petitioners"). Both the Request for a Hearing and the Petition to Intervene are dated August 11, 1980.

The Notice of Opportunity for Hearing ("Notice") in connection with the application for operating licenses for Palo Verde Nuclear Generating Station Units 1, 2 and 3 was published in the *Federal Register* on July 11, 1980. (45 *Federal Register* 46941). A similar notice was published in

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*The Arizona Republic* and *The Phoenix Gazette*, also on July 11, 1980. The Notice provided in part that "any person whose interest may be affected by this proceeding may file a petition to intervene."

In an operating license proceeding, unlike a construction permit proceeding, a hearing is not mandatory. Under section 189(a) of the Atomic Energy Act of 1954, as amended, a hearing on an operating license application is to be granted by the Commission upon the request of any person whose interest may be affected by the proceeding. A petitioner who seeks a hearing must meet two basic requirements. First, he must demonstrate that he has standing to take part in the proceeding. Second, he must advance at least one contention which raises an issue open to adjudication in the proceeding. In the absence of meeting these requirements, an intervention petition should not be granted, in which case a hearing is not required. *Cincinnati Gas & Electric Company* (William H. Zimmer Nuclear Power Station), ALAB-305, NRCI-76/1 8, 9-10, 12 (1976).

#### STANDING

"Standing" is legal shorthand for the right to take part in a given case." *Houston Lighting and Power Company* (South Texas Project, Units 1 and 2), ALAB-549, 9 NRC 644, 646 (1979). In order to have standing in Commission proceedings, the petition must allege both (1) "some injury that has occurred or will probably result from the action



involved" and (2) an interest "arguably within the zone of interest" protected by the statute invoked. *Portland General Electric Company* (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, NRCI-76/12 610, 613-14 (1976).

In reviewing Petitioners' filings, it is unclear whether they are requesting to intervene as a group or as three separate parties. In Petitioner Hourihan's cover letter of August 11, 1980, addressed to the Office of the Executive Legal Director, reference is made to Petitioners' collective Petition to Intervene and Petitioners' collective interests, thus implying that Petitioners seek intervention as an organization. (See also Petitioners' Request for a Hearing, wherein reference is made to "our" petition and "Petitioners'" contentions). On the other hand, nowhere in Petitioners' filings is any name given for the organization; only the three individuals' names are given. Furthermore, in the Statement of Standing signed by Petitioner Shuey, Petitioner Shuey states: "I am seeking standing as a party . . . ." (Emphasis supplied). Regardless of whether Petitioners' intent was to seek intervention as an organization or as three separate parties, the Petition to Intervene is defective for the reasons set forth below.

An organization has standing to intervene if it can show that it or its members have an interest entitled to protection. See *Allied-General Nuclear Services, et al.* (Barnwell Fuel Receiving and Storage Station), ALAB-328,

NRCI-76/4 420 (1976). Nowhere in the Petition to Intervene do Petitioners attempt to establish an interest held by them in common as an organization. Rather, Petitioners make the general statement that "the results of the proceeding will affect the petitioners [sic] health, livelihood [sic] and property." (Petition to Intervene at 1). Further information is contained in the Affidavit of Patricia Lee Hourihan and the Statement of Standing signed by Christopher Shuey. However, to the extent that these documents elaborate on the interests of "health, livelihood and property," they do so only with respect to Petitioners' Hourihan and Shuey as individuals, and not with respect to Petitioners as a group. Therefore, Petitioners have failed to establish standing based on any interest which they as an organization possess.

The next question is whether Petitioners possess standing as an organization on behalf of its members. When an organization's standing is based upon the interest of its members, it must identify individual members, *Houston Lighting and Power Company* (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 389-94 (1979), describe specifically how their interests will be affected, *Virginia Electric and Power Company* (North Anna Nuclear Power Station, Units 1 and 2), ALAB-536, 9 NRC 402, 404 (1979), and demonstrate that the members have authorized the organization to act on their behalf, *Houston Lighting and Power Company*, 9 NRC at 395-97.



Petitioners do identify themselves in the Petition and Request for a Hearing, although no address is given for Petitioner Dahl, and identify their health, livelihood and property as interests which may be affected. Petitioners allege that "[t]he routine operation of the plant will endanger the health, lives, civil rights, business interests and property of petitioners." (Petition to Intervene at 1). Although an allegation of risk to one's safety and welfare may contribute to establishing a personal interest, it is insufficient of itself to fall within the zone of interest protected by the Atomic Energy Act because any number of citizens could allege such a risk. See *Transnuclear, Inc., et al.*, CLI-77-24, 6 NRC 525 (1977). Further information is provided for Petitioners Hourihan and Shuey in the Affidavit of Patricia Lee Hourihan and the Statement of Standing signed by Petitioner Shuey. Petitioner Hourihan states that she is a resident of Phoenix, Arizona, is employed in Tempe, Arizona, and holds an interest in real property near Sun City, Arizona. Petitioner Shuey states that he is a resident of and is employed in Tempe, Arizona. No additional information was provided by Kevin Dahl; therefore, Petitioners have failed to establish that Petitioner Dahl has a personal interest in the proceeding.

Even assuming that Petitioners Hourihan and Shuey have sufficiently particularized how their respective interests may be affected, the group still has not achieved



standing because there is no demonstration that either Petitioner Hourihan or Petitioner Shuey has authorized the group to act on her or his behalf. The fact that Petitioner Hourihan signed both the Petition to Intervene and the Request for a Hearing does not satisfy this requirement:

"What the member would be called upon to do is confirm not that he had directed or approved the filing of an intervention petition but, rather, that he had authorized the organization to represent his interests in the proceeding and thus had clothed it with his personal standing. . . ." *Houston Lighting and Power Company*, 9 NRC at 396.

In summary, Petitioners as a group have failed to demonstrate that the group has standing to intervene, either on the group's own behalf or on behalf of one or more of its members.

The remaining question is whether Petitioners may participate as three separate parties. As to Petitioner Shuey, it may be that he would have standing to intervene. Even so, he still would not have met the requirements for intervention, because he filed neither a request for hearing or a petition to intervene. Although the Request for a Hearing and Petition to Intervene listed Petitioner Shuey as a petitioner, the documents were signed only by Petitioner Hourihan. A petitioner in a Commission proceeding may assert only his interests, not those of third parties. *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB-413, 5 NRC 1418, 1421 (1977). Petitioner

Hourihan, who apparently is not an attorney, is not permitted to represent Petitioner Shuey or to assert his interests. Thus, if Petitioner Shuey wished to have participated as a separate party, he should have filed his own petition to intervene. In failing to do so, Petitioner Shuey failed to meet the requirements of 10 CFR §2.714.

As to Petitioner Dahl, as noted on page 5, *supra*, he has not established a personal interest in the proceeding. In addition, even if he had established such interest, he, like Petitioner Shuey, failed to file a request for hearing or a petition to intervene, and thus has not met the requirements of 10 CFR §2.714.

With respect to Petitioner Hourihan, it appears that she may have standing to intervene. In addition, she did file a petition to intervene and a request for a hearing. It remains unclear, however, whether she in fact wishes to participate as a separate party.

#### CONTENTIONS

Under 10 CFR §2.714(b), a petitioner may delay filing a list of contentions until not later than fifteen (15) days prior to the holding of the first prehearing conference. However, this does not relieve a petitioner from meeting the requirements of 10 CFR §2.714(a)(2), which provides: "The petition shall set forth with particularity. . . the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene."



Petitioners have failed to meet this requirement, even though it was set forth clearly in the Notice published in the *Federal Register* (45 Federal Register at 46942) and the notice published in the local newspapers.

CONCLUSION

As an organization, Petitioners have failed to establish standing. As three individuals seeking intervention as separate parties, Petitioners have failed to meet the requirements of 10 CFR §2.714.

Based on the foregoing, Joint Applicants submit that the Request for a Hearing and Petition for Leave to Intervene of Petitioners should be denied.

RESPECTFULLY SUBMITTED this 26th day of August, 1980.

SNELL & WILMER

By



Arthur C. Gehr  
Charles A. Bischoff  
3100 Valley Bank Center  
Phoenix, Arizona 85073  
Attorneys for Joint  
Applicants



Dated: AUGUST 26, 1980



