

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter Of)

CONSUMERS POWER COMPANY)

(Palisades Plant))

) Docket No. 50-255SP
)
)
)

RESPONSE OF CONSUMERS POWER COMPANY
TO GREAT LAKES ENERGY ALLIANCE
RESPONSE

Consumers Power Company ("Consumers Power" or "Applicant"), pursuant to the March 30, 1979 Memorandum and Order of the Atomic Safety and Licensing Board ("Licensing Board"), hereby responds to Great Lakes Energy Alliance Response to Consumers Power Co., NRC Staff and NRC Licensing Board, submitted on April 20, 1979. The initial Petition for Leave to Intervene filed by Great Lakes Energy Alliance ("Great Lakes" or the "petitioner") in this operating license amendment proceeding was found by the Licensing Board to contain a fatally defective statement of interest and to provide no basis for the grant of discretionary intervention. For the reasons set forth below, Great Lakes' Response does not cure the defects found in its earlier submission. Therefore, Great Lakes must be

denied leave to intervene in this Nuclear Regulatory Commission (the "NRC" or the "Commission") proceeding.

I. GREAT LAKES HAS NOT ESTABLISHED
ITS INTEREST IN THIS PROCEEDING

The Commission's requirements relating to intervention, set forth in 10 C.F.R. §2.714, are explained at length in Consumers Power's Answer to Great Lakes Petition for Leave to Intervene and in the NRC Staff's Reply to that petition. Based upon an analysis of those requirements, both Applicant and the NRC Staff concluded that Great Lakes had not demonstrated its interest in this proceeding; this Licensing Board agreed.

Rather than rule on the adequacy of Great Lakes' initial petition, however, the Licensing Board afforded the petitioner an opportunity to amend with regard to standing and contentions. Because Great Lakes is not represented by counsel, the Licensing Board gave a clear indication of the type of information which the petitioner should provide in its amended submission in order to establish its standing. That advice went unheeded. The only supplemental information provided by Great Lakes which goes to the question of standing is a listing of the

names and addresses of seven people who reside in the vicinity of the Palisades Plant and who belong to groups that are a part of the Great Lakes coalition. The petitioner does not even attempt to demonstrate that these persons have interests within the zone of interests to be protected by the Atomic Energy Act or the National Environmental Policy Act, or that those interests may be affected by the results of this proceeding. Because Great Lakes' Response does not even address this requirement of §2.714(a)(2), and because the initial petition has already been found to be fatally defective in this regard, the petitioner must be denied leave to intervene.

In addition to the fact that Great Lakes has not demonstrated an interest in this proceeding, another omission in its pleadings requires that the petition be denied. As the Atomic Safety and Licensing Appeal Board ("Appeal Board") has recently explained, there must be a showing that a member has specifically or generally authorized the association to represent the member's interests in order for the association to be permitted to intervene. Houston Lighting & Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC ____ (April 4, 1979). This decision, in which the Appeal Board denied standing to an association partly because it did

not meet that requirement, is a clarification of a principle long-recognized in NRC practice. Allied-General Nuclear Services (Barnwell Fuel Receiving and Storage Station), LBP-75-60, 2 NRC 687, 690 (1975), affirmed, ALAB-328, 3 NRC 420 (1976).

This principle has a double application to the instant proceeding. First, Great Lakes must demonstrate that the named individuals at least generally authorized their member groups, which are not specified, to represent their interests. Second, there must be a showing that those member groups at least generally authorized Great Lakes to represent their interests and those of their individual members. Quite clearly, there has been no attempt to make either showing in Great Lakes' filings. Furthermore, there has been no showing as to how the individual who signed the petition, Mary P. Sinclair, has been duly authorized to represent Great Lakes in this proceeding. That showing is mandated by Barnwell, supra, 2 NRC at 690. See also Detroit Edison Company (Enrico Fermi Atomic Power Plant, Unit 2), LBP-78-37, 8 NRC 575 (1978).

In addition, Consumers Power wishes to stress that Ms. Sinclair, as a member of Great Lakes and a non-lawyer, should not be permitted to represent the seven individuals who are members of groups which in turn are members of Great

Lakes. This is contrary to the Commission's Rules of Practice regarding representation, specified in §2.713(a). While that rule may occasionally be stretched by the NRC to permit a non-lawyer member of a group to represent his own group, it cannot be broken by allowing Ms. Sinclair to represent individuals who are not even themselves members of Great Lakes.

II. GREAT LAKES HAS NOT ESTABLISHED
A BASIS FOR GRANTING DISCRETIONARY
INTERVENTION

As Consumers Power explained in its answer to Great Lakes' initial petition, that organization has not established any basis upon which discretionary intervention could be granted. The Licensing Board concurred in this judgment. A reading of Great Lakes' Response makes it even more obvious that the petitioner would make only a marginal contribution to the proceeding which would be held as a result of Great Lakes' intervention, for the petitioner states:

Our lack of funds for attorneys and expert witnesses will make it difficult to provide the kind of record that the Licensing Board should have.
Reply at 4.

While the petitioner goes on to state that citizen intervention is necessary, it is difficult to understand how such

intervention could be effective or meaningful absent funds for attorneys and expert witnesses. Great Lakes' lack of counsel has already hampered the petitioner's attempts to participate, and that situation could only be exacerbated as the proceedings become more complex. Because the most important factor to consider in weighing the grant of discretionary intervention is the extent of the contribution which might be expected of the petitioner, Portland General Electric Co. (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976), Great Lakes cannot be permitted to intervene on a discretionary basis.

III. THE MAJORITY OF GREAT LAKES' REPLY
IS IRRELEVANT AND DISRESPECTFUL AND
SHOULD BE STRICKEN

While Applicant has already addressed the few substantive items contained in Great Lakes' Response, some comments are in order concerning the remainder of that pleading. This Licensing Board afforded Great Lakes the opportunity to amend its petition in order to set forth a proper showing of standing and to refine its contentions. Rather than effectively utilize this opportunity, however, the petitioner chose to direct the majority of its Response to an attack upon the integrity of both Consumers Power and the NRC Staff. Great Lakes first alleges that misconduct

occurred during the suspension hearings concerning Applicant's Midland Plant. Aside from the obvious points that these statements do not relate to the Palisades Plant or to this proceeding, and that this issue is currently being pursued by another Licensing Board, Great Lakes' tactic of setting forth as facts that which has never been proven is reprehensible. Furthermore, the petitioner's charges that attorneys for Consumers Power and the NRC Staff should be disbarred can only be termed irresponsible.

Great Lakes continues in this vein by making further allegations related to both the Midland and the Palisades Plants, allegations which again have nothing to do with the Palisades steam generator replacement and are distortions of the truth. Consumers Power does not believe that any purpose would be served by engaging in a point by point refutation of these statements. Rather, it is manifest that such baseless, irrelevant charges and personal attacks have no place in NRC pleadings and should carry no weight. The Appeal Board has recognized that personal attacks upon opposing counsel are not to be made in pleadings, Northern Indiana Public Service Company (Bailly Generating Station, Nuclear-1), ALAB-204, 7 AEC 835, 837-38 (1974), and that neither lawyers nor laymen may file insulting and disrespectful papers, Metropolitan Edison Company (Three Mile Island

Nuclear Station, Unit No. 2), ALAB-474, 7 NRC 746, 748-49 (1978). In view of these authorities, the majority of Great Lakes' Response, and all of the exhibits which allegedly describe these "facts," should be stricken. The filing of NRC pleadings should not be utilized as a vehicle for baseless and scandalous assertions.

IV. GREAT LAKES HAS NOT SET FORTH ONE
ACCEPTABLE CONTENTION

According to the Commission's Rules of Practice, a petitioner must file, not later than 15 days prior to the special prehearing conference, "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." 10 C.F.R. §2.174(b). A petitioner who fails to satisfy those requirements with respect to at least one contention will not be admitted to participate as a party. Id. The initial petition filed by Great Lakes contained a list of nine contentions. For the reasons set forth in Consumers Power's Answer, however, none of those contentions conformed to the Commission's requirements.^{*/} Although the

^{*/} While the analysis in Applicant's Answer was phrased in terms of "aspects" under 2.714(a)(2), those remarks are equally applicable to the contentions required by §2.714(b). Furthermore, the petitioner did not even attempt to set forth any bases for its contentions. This is an additional reason why none of the contentions is acceptable.

NRC Staff did not analyze the contentions in detail, it also expressed the view that the contentions were not acceptable.

The Response filed by Great Lakes does not even address the question of contentions, much less attempt to refine them or provide the required bases. Because Great Lakes did not submit even one proper contention, the petitioner could not be admitted as a party to this proceeding even if standing had been demonstrated.

CONCLUSION

For the reasons set forth above, Great Lakes has not established standing or set forth an admissible contention. Therefore, the petitioner must be denied leave to intervene in this proceeding.

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