

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
BOSTON EDISON COMPANY, et al
(Pilgrim Nuclear Power Station
Unit 2)

Docket No. 50-471



APPLICANTS' ANSWER TO THE MASSACHUSETTS
OFFICE OF ENERGY RESOURCES' PETITION
FOR LEAVE TO PARTICIPATE AS AN
INTERESTED STATE AGENCY

By Petition served May 23, 1979, the Massachusetts Office of Energy Resources ("MOER") seeks leave to participate in the proceedings before this Board under 10 CFR §2.715(c) with respect to the issue of "need for power".

For the reasons appearing below, Applicants say that MOER's Petition should be granted.

1. On March 13, 1979, Massachusetts' Governor Edward J. King established the Office of Energy Resources, which agency is "responsible for all state policy regarding new energy facilities." MOER Petition, Attachment 1. In an affidavit appended to MOER's petition, Joseph S. Fitzpatrick, MOER's Director, states that:

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"It is crucial that the people of the Commonwealth of Massachusetts be guaranteed a safe, inexpensive and reliable source of electrical energy over the next several decades and MOER believes that it has a responsibility to participate in decisions which will affect the availability of such future sources."

2. MOER's participation is encouraged by the Nuclear Regulatory Commission's Rules of Practice (10 CFR §2.715, as amended, 43 F.R. 17800, April 26, 1978), which envision a cooperative role for the states and their political subdivisions and agencies in the NRC's hearing process.*/
3. This Board has granted intervenor status to the Attorney General of the Commonwealth pursuant to 10 CFR §2.714. Memorandum and Order, May 30, 1974. It is clear, however, that the Attorney General does not purport to speak for all or even any state agency. In the following exchange with the former Chairman during the hearing of October 20, 1975, the Attorney General's status in this proceeding was articulated by his representative thusly:

*/ The 1978 amendments to the Commission's Rules of Practice expanded §2.715(c) to provide the right of participation to not only states but also counties, municipalities and agencies thereof. In the Statement of Considerations accompanying these changes to §2.715(c), the Commission observed, "This form of participation . . . has been a welcome and valuable part of the Commission's licensing proceeding." 43 F.R. 17800, (April 26, 1978).

MS. WEISS: . . . We do not represent any state agency nor do I believe the Attorney General represents a named state agency in all of the suits. We do not represent a state agency in this case or any group of state agencies . . . For the purpose of this proceeding the political makeup of this Commonwealth is simply not in question. The Attorney General acts on his own.

CHAIRMAN COUFAL: Well, then is it a fair inference that whatever position the Attorney General may take in this proceeding may be a minority position among state agencies?

MS. WEISS: Absolutely. It could be theoretically only his own opinion. It is never meant to be represented that the position of the Attorney General in this case represents any official position of the Commonwealth which presumably would come from the Governor or from another state agency." Tr. 835.

Accordingly, it is particularly appropriate for an agency responsible for a "state-wide energy policy" to be admitted to this proceeding and §2.715(c) provides for such an agency appearance which the Attorney General rightfully does not challenge.

4. At the May 24, 1979 hearing, counsel for Intervenor Cleetons announced his intention to oppose MOER's petition to participate as an interested state agency, (Tr. 9110-9114), purportedly on the grounds of the similarity of the instant petition to a petition filed by Plymouth County Nuclear Information Committee (PCNIC), an organization which he heads and represents, which petition was denied as untimely filed without the

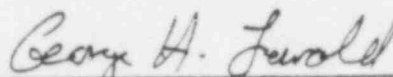
necessary showing of good cause. See Memorandum and Order dated August 30, 1974. Boston Edison Company, Pilgrim Nuclear Power Station Unit 2, RAI-74-8, 330, 338 (1974), affirmed in ALAB-238, 8 AEC 656 (1974). The decision by this Board respecting PCNIC's late filed petition rested on findings that it had not met the tests for late filing of §2.714 and, in particular, that no good cause was shown for the petition's late filing and that PCNIC's interests would be adequately represented by other parties to this proceeding. While in determining whether to not to grant MOER's petition, it is unnecessary for this Board to reach the tests set forth in 10 CFR §2.714(a)(1)(i)-(v), MOER's petition meets these requirements in any event.^{*/} MOER is a newly constituted state body responsible for "state-wide energy policy." No other party has congruent interests with MOER on the issue of "need for power." Furthermore, MOER has represented that it will not broaden the issues or delay the proceeding. The PCNIC petition

^{*/} The factors set forth in §2.714(a) have never been held to apply to participation as "an interested state" under §2.715(c). See, Exxon Nuclear Company, Inc., LBP-77-59, 6 NRC 518, 523, (1977); Gulf States Utilities Company, LBP-76-32, 4 NRC 293, 296 (1976); Texas Utilities Generating Co., LBP-74-75, 8 AEC 673, 675 (1974).

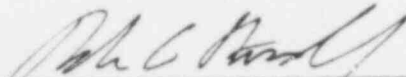
filed under §2.714 of the Commission's Rules of Practice, stands distinguished from MOER's petition for leave to participate as an "interested state agency", and the denial of PCNIC's petition affords no basis for the denial of MOER's petition.

WHEREFORE, the Applicants pray that MOER's petition be granted.

Respectfully submitted,



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Dated: June 1, 1979

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CERTIFICATE OF SERVICE

I hereby certify that the within "Applicants' Answer to the Massachusetts Office of Energy Resources' Petition for Leave to Participate as an Interested State Agency" has been served on the following by deposit of copies thereof in the United States Mail, first class or air mail, postage prepaid this 1st day of June, 1979:

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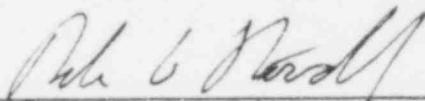
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