

Before The
NUCLEAR REGULATORY COMMISSION
Atomic Safety and Licensing Board Panel



In re
Application of
OMAHA PUBLIC POWER DISTRICT
(Fort Calhoun Station, Unit No. 1)
For Amendment to
Facility Operating License No. DPR-40

Docket No. 50-285 SP

REPLY

COMES NOW the Natural Resources Committee of the Citizens Advisory Board of the Metropolitan Area Planning Agency, by its Chairman and Attorney in fact Alan H. Kirshen, and comes now Alan H. Kirshen, individually, and for its Reply to the Applicant's Consolidated Answer to Request for Hearing states as follows:

I. THE REQUIREMENTS OF 10 CFR § 2.714 (a)(2) ARE INAPPLICABLE TO THE REQUESTS FOR HEARING HEREIN

1. Apparently Applicant and its counsel have not read the Request for Hearing at all carefully, or they would discover that it is not a Petition for Leave to Intervene, but simply a Request for Hearing. Nonetheless, Applicant

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has chosen to call an apple an orange in order to impose the requirements for oranges upon apples, i.e. has chosen to treat the Request for Hearing as a Petition for Leave to Intervene in order to impose the requirements of Section 2.714(a)(2), applicable to the latter, upon the Request for Hearing. Section 2.714(a)(2) says "the petition," and no such petition here exists. Instead, the Committee and Alan H. Kirshen individually (hereinafter "requestors") have simply requested a hearing, without seeking intervention, as is clearly permitted of "any person whose interest may be affected by a proceeding" by the alternative language of Section 2.714(a)(1), permitting a Petition for Leave to Intervene "and/or" a Request for a Hearing to be filed. Requestors then anticipate participating as non-parties pursuant to Section 2.715(c) and (a), respectively.

II. APPLICANT SHOULD BE ESTOPPED TO CONTEST THE
REQUEST FOR HEARING HEREIN BECAUSE OF ITS
REPRESENTATIONS (AND MISREPRESENTATIONS)
WITH RESPECT THERETO

As set forth in the Request for Hearing, on August 29, 1979, Applicant sent some representatives to a regularly scheduled meeting of the Natural Resource Committee. Following the earlier lead of the Director of the Nebraska Department of Environmental Control, these representatives--two engineers and a public relations functionary, repeatedly indicated in response to certain questions expressing safety, health and

environmental concerns about stretch power, that the NRC license modification proceeding would be a more appropriate forum for these matters, and that this forum would be available to the Committee in November 1979, or later. The present denial of these representations (answer, at 4, note 1) apparently indicates that Applicant's counsel is misinformed or that Applicant is not above making a material misrepresentation to the NRC in these proceedings in order to avoid a hearing, for these representations, as contained in the Minutes of the Committee meeting and perhaps on tape as well, caused the Committee to table the entire matter until November, when the opportunity to be heard in the NRC proceeding would presumably have arisen. In fact, as Applicant is apparently only too well aware, but for the instant Request for Hearing there would be no forum as Applicant represented, due to the operation of 10 CFR § 2.105(e), and but for the fact that the Committee's chairman, Alan H. Kirshen, happened to be an attorney and happened to discover this falsity, no Request for Hearing would have been filed, for the Notice of Opportunity to Request a Hearing (which only arrived at MAPA on October 1, 1979, and at the Committee on October 4) would have been supravened by Applicant's representations, with the Notice appearing to be only of the hearing which Applicant had promised, requiring no action. These misrepresentations, to

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the Committee and now to the NRC ^{1/} cast serious doubt upon Applicant's credibility generally, and should not only estop Applicant to resist the granting of such a hearing, but make the holding of a hearing in this matter all the more imperative, for reason that that venerable legal doctrine, falsus in uno, falsus in omnibus, now calls into question the credibility of Applicant's entire filing in this matter.

III. THE REQUEST FOR HEARING ADEQUATELY SPECIFIES THE INTERESTS OF THOSE MAKING THE REQUEST, TAUTOLOGY OF THE OBVIOUS NOT BEING NECESSARY

Assuming, arguendo that Section 2.714(a)(2) is applicable to a Request for a Hearing, that requirement has been satisfied. While Applicant apparently would limit "interest" to property or financial concerns, they fail to cite any authority for this proposition, and the regulation is clearly not so limited. As set forth in its Request for Hearing, the Natural Resources Committee has a readily apparent governmental concern, for it is charged by law with being the means for citizen review and comment pursuant to numerous Federal laws, including those set forth in the Request for Hearing,

^{1/} Another falsity in Applicant's Answer, again perhaps due to the misinformation of counsel or equally possibly to material misrepresentation, is the assertion that Applicant has no knowledge of the specific concerns of the Committee. These were spelled out in great detail at the August 29 meeting, Applicant's portion of which lasted at least two hours.

as well as being part of the so-called "A-95 review process" mandated by Federal Law for numerous Federal actions.^{2/}

Requestors' interest in the safety of stretch power at Fort Calhoun should not be required to belabor the obvious in the light of recent events at other nuclear facilities: the concern is with the escape of radiation or irradiated elements with all of the attendant disabilities that this may cause. If Applicant really expects a description of all the scenarios in which requestors (as a committee representing the community), or as individuals, could have their property or financial interests affected by an accident at the Fort Calhoun site, perhaps wholly or in part attributable to the modification sought in this proceeding, they are either terribly naive or terribly sanguinary.^{3/}

Further as stated in its Request, the Natural Resource Committee is the public interest (i.e. the interest of selected representatives of the public) in the environmental impacts of the instant license modification, specifically

^{2/} OMB Circular A-95 promulgated pursuant to the Inter-governmental Cooperation Act of 1968.

^{3/} As Applicant is already well aware, both from having had numerous dealings with the Natural Resource Committee and MAPA in the past, and from having had several of its employees and at least one Director serving with MAPA in various capacities in the past, the Committee is drawn from the MAPA constituency of governments in the Omaha area, which includes Washington County and Fort Calhoun. This is set forth in the Request for Hearing.

thermal impacts upon the Missouri River, ^{4/} but more generally the environmental impacts of potential radioactive discharge as well. It should be abundantly clear that these are not the abstract concerns of some anti-nuclear group, but the legitimate concerns of the community about the effects and implications, environmental, economic, and institutional, of Applicant's proposed powerplant modification. Unlike an anti-nuclear group, requestors have no specific contentions, only questions about probabilities, about safety, and about environmental impacts, which Applicant is apparently unwilling or perhaps unable to answer.^{5/} At a hearing in this matter, in which requestors and others could participate pursuant to Section 2.715, these matters could be aired.^{6/} A nuclear powerplant is not a Mineral King, of interest only to those

^{4/} A treatise upon the importance of the Missouri River to the Omaha Community would be tautologous. Among other things, it is a source of drinking water, water for industry, recreation, irrigation, livestock, wildlife, fishing and many other human enterprises.

^{5/} If the latter, then Applicant's license modification should not be granted, but this remains to be seen.

^{6/} Applicant's argument that these kinds of citizens might not be members of the Committee is patently ridiculous; why else would the Committee bother? The history of this matter and the pathology of nuclear reactor incidents conceivably extending far beyond the locus thereof, bely the shallowness of Applicant's suggestions. It is not inconceivable, if Applicant really wants to get specific, that the increased temperatures and pressures of stretch power could cause the rupture of some defective mechanism, that due to faulty control design or operator error this could cause the release of a cloud of radioactive gas which could kill the members of the Committee, disrupt the governments with which the Committee works, and force the evacuation of their property, as well as the disruption of their jobs and businesses.

who may use it or those who may enjoy it from afar, and while many members of the Committee including its Chairman, derive their power in part from Fort Calhoun and are ratepayers of the OPPD, ^{7/} the prospective impacts of Applicant's application fall upon a far greater territory in both Nebraska and Iowa. To the extent that the granting of the instant license modification exacerbates these impacts or the potential thereof, any order entered herein granting or denying the application to go to stretch power will affect the interest of the Committee and of the individual members thereof, including its Chairman.^{8/}

Applicant attempts to suggest that the Committee has no authority to represent the individual interests of its members. This absurd argument not only overlooks the allegations in the Request for Hearing, that the Committee action was not only officially and regularly initiated, and that it was specifically

^{7/} In fact, since OPPD is, unlike many utilities, an actual governmental subdivision, its ratepayers, in effect, is the OPPD. At least until the next election, Applicant has apparently forgotten that fact.


^{8/} While Applicant already has the address of individual Requestor Alan H. Kirshen, and while there is no requirement that addresses be provided, if it will make counsel happy, it is 1114 So. 97th Street, Omaha, Nebraska 68124. This individual both shares the concerns of the Committee and is further concerned about Applicant's apparent intention of getting its application approved without anyone having anything to say about it, and its willingness to go to any lengths, even prevarication, to avoid having its application questioned. (See supra.)

authorized by the Executive Committee of the Citizens Advisory Board (both of which assertions are made under oath) but overlooks as well both the unique nature of the Committee and its very limited interest in having the forum that the Applicant itself promised, a means by which the concerns of the Committee and the public can at least be expressed, if not resolved. 10 C.F.R. §2.715(c). In this sense, the public and the Committee are in a position to make a valuable contribution in these proceedings by at least raising questions and concerns so that the application not, as Applicant desires, pass unquestioned.^{9/} Not only would this be deplorable in its own right, but extremely ironic in light of the fact that the primary criterion for the hearing is the public interest.


^{9/} Applicant's suggestion that only persons qualified by specialized education or pertinent experience should be allowed to be heard is patently incredible. In any event, Alan H. Kirshen's legal education and experience as Professor of Environmental Law should satisfy this specious criterion. The Committee's participation as an entity of a Council of Governments, should be guaranteed by 10 C.F.R. § 2.715(c), which exactly describes the role which is sought in these proceedings. Obviously, however, if there is no hearing or other forum, the Committee will have no opportunity to participate in the license modification process, since there will, pursuant to 10 C.F.R. § 2.105(e) be no process in which to participate.

Respectfully submitted,

NATURAL RESOURCE COMMITTEE
CITIZENS ADVISORY BOARD
METROPOLITAN AREA PLANNING AGENCY

By 

Alan H. Kirshen
Chairman and Attorney in fact

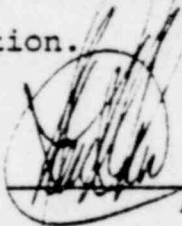


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October 30, 1979

CERTIFICATE OF SERVICE

I, Alan H. Kirshen, hereby certify that I served the foregoing Reply on the 1st day of Nov. 1979, by mailing true copies thereof, postage prepaid, to all parties of record in the above-entitled proceeding, to counsel, to the members of the Atomic Safety and Licensing Board Panel, and to the staff of the Commission as required by Section 2.701, Title 10, Code of Federal Regulation.



Alan H. Kirshen

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