

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

PEOPLE AGAINST NUCLEAR ENERGY MOTION TO  
MODIFY MEMORANDUM AND ORDER RULING ON PETITIONS  
AND SETTING SPECIAL PREHEARING CONFERENCE

People Against Nuclear Energy (PANE), which intends to address psychological distress issues, moves the Licensing Board to modify its Order and delete its demand for discus-

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sion of the state of the art of stress psychology and a plan for presentation of psychological distress evidence. This demand is contrary to NRC regulations and places an unfair burden on PANE by requiring it to prepare and prove a significant part of its factual case before the hearings have even begun.

#### Discussion

Apparently the justification for the Licensing Board's imposition of special requirements on parties intending to raise psychological distress issues is the Commission's Order and Notice of Hearing of August 9, 1979. At page 13, the Commission stated that it had "not determined whether such issues can be legally relevant to this proceeding," and indicated that parties wishing to raise psychological distress contentions should brief the question of whether those issues are relevant to this proceeding under either the Atomic Energy Act or the National Environmental Policy Act. The Licensing Board would then certify the question to the Commission, with or without recommendations, and the Commission would rule on the scope of the hearing before the prehearing conference.

PANE objects strenuously to the manner in which the Licensing Board has implemented the Commission's briefing requirement. Rather than simply incorporate that requirement into its own Order, the Licensing Board has also demanded that parties intending to file psychological

distress contentions provide a plan for the presentation of psychological distress evidence and a discussion of the state of the art of stress psychology. Neither is relevant to the legal issue of whether psychological distress evidence may be considered in this proceeding. The Licensing Board's requirement that they be provided as a condition of being granted standing to intervene is beyond the scope of the Commission's Order and the NRC's regulations governing intervention.

Furthermore, the Licensing Board may not require PANE to prove its case as a condition of being allowed to intervene in this proceeding. The Commission's regulations require only that PANE state its psychological distress contention with reasonable specificity and basis, and that it establish the requisite interest. 10 CFR 2.714. Although neither the Commission nor the Licensing Board has expressed it in these terms, the real question here is whether PANE's interest in protecting the psychological health of its members and their community is within the zone of interests protected by the AEA or NEPA. Portland General Electric Company (Pebble Springs Nuclear Plant, Units 1 and 2), CLI-76-27, 4 NRC 610 (1976). If it is within that zone of interests, PANE is entitled to intervene since the Licensing Board has already ruled that PANE has met all of the other requirements. How PANE will present its case and whether the state of the art of stress psychology is such that PANE

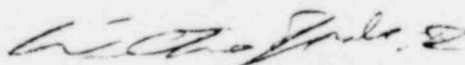
can present reliable evidence are not relevant to the purely legal issue of the scope of the AEA or NEPA. Once the question of scope of these statutes has been answered, PANE's contention is no different from any other. The presentation of evidence to PANE's contentions is a matter for the hearing. The Licensing Board may not treat PANE differently by requiring it to present any aspect of its case before the hearing itself.

In addition, to comply with the Licensing Board's Order, PANE would have to rely upon expert witnesses and incur substantial expense only to be faced with the possibility that its preparation has been for naught. This is an unfair burden on PANE when the underlying question of the relevance of the psychological distress contentions does not depend in any way upon how PANE will present its case or upon the state of the art of stress psychology.

#### Conclusion

For the foregoing reasons, PANE moves that the Licensing Board delete from its Order of September 21, 1979, the requirement that parties intending to address psychological distress issues provide a plan for the presentation of psychological distress evidence and a discussion of the state of the art of stress psychology.

Respectfully submitted,



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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
METROPOLITAN EDISON )  
COMPANY, et al., ) Docket No. 50-289  
 )  
(Three Mile Island Nuclear )  
Station, Unit No. 1) )

CERTIFICATE OF SERVICE

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