

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

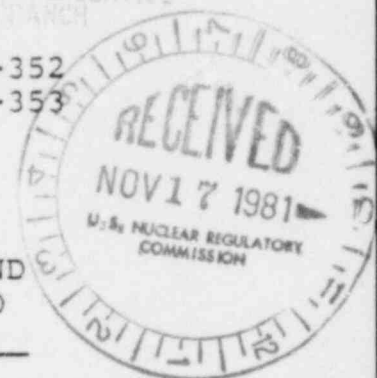
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USNRC

Before the Atomic Safety and Licensing Board ⁸¹ NOV 10 P1:25

In the Matter of)
Philadelphia Electric Company)
(Limerick Generating Station,)
Units 1 and 2))

Docket Nos. 50-352
50-353

APPLICANT'S ANSWER TO SUPPLEMENTAL PETITIONS AND
INFORMATION FILED BY INTERVENORS IN RESPONSE TO
LICENSING BOARD ORDER OF OCTOBER 14, 1981



In its "Memorandum and Order Setting Schedule for Submission of Contentions and Other Preliminary Information," dated October 14, 1981, the Licensing Board herein requested a number of the petitioners in this proceeding to provide further information to assist the Board in its deliberations on the issue of standing. The Board stated that it would "draw a negative inference, which could be determinative, from a failure to respond on time." ^{1/}

A number of petitioners have failed to respond altogether. Applicant submits that the additional information furnished by the other petitioners does not in any case establish standing. Accordingly, Applicant is of the view that none of the petitioners has demonstrated standing to participate in the proceeding for the reasons more fully

1/ Memorandum and Order at 5.

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set forth in its respective answers to the petitions previously filed. Rather than make repetitive arguments, Applicant hereby incorporates and respectfully refers the Board to those answers for a statement of the authorities on which it continues to rely in opposing the petitions to intervene.

In addition, Applicant addresses each of the responses briefly below to highlight the major deficiencies in the intervenors' responses.

1. Clarence Wells, Samuel and Clarissa Cooper, Steven Levin and Helene Greenstein. The Board asked these individuals to state whether each intended to request formal party status as an intervenor and, if so, to comply with 10 C.F.R. §2.714. Mr. Wells has indicated by letter dated November 2, 1981 that he does not wish to participate in the proceeding. No other reply to the Board's Order has been received by Applicant from any of these individuals, except two unresponsive and irrelevant letters from the Coopers (one dated October 12, 1981 and another undated) about electric power rates. Accordingly, these persons have not expressed a desire to intervene and their various submittals should not be deemed "petitions." Alternatively, any filing deemed a petition should be denied for failure to comply with the Board's Order.

2. Environmental Coalition on Nuclear Power ("ECNP"), Keystone Alliance, Consumers Education Protective Association ("CEPA"), and Friends of the Earth in the Delaware Valley

("FOE"). Each of these petitioners was directed to file affidavits indicating that their respective representatives were authorized to intervene in this proceeding and act on their behalf. Additionally, affidavits of individual members setting forth their interests and authorizing the organizations to represent them were requested. Petitioner FOE was directed to file an affidavit identifying which of its affiants are members of FOE.

Neither ECNP nor CEPA has submitted an affidavit authorizing a petition seeking intervention in this proceeding and further authorizing a particular representative to act on its behalf.

The affidavits filed on behalf of ECNP of Nancy Tate and William Buskirk, Jr. merely state that the affiants live within 35 and 40 miles of Limerick, respectively, and that routine and accidental releases of fission products from the plant will adversely affect their health and safety. For the reasons noted in Applicant's Answer to ECNP, such generalized statements are insufficient to show the requisite injury in fact for standing. The same is true of the affidavits filed in support of the Keystone Alliance petition by Carl Craft, Barry E. Trevor, and Dwain K. Jones. ^{2/}

2/ In addition, affiant Trevor lacks standing (and Keystone Alliance therefore lacks derivative standing) to represent the proprietary interest of the Crefeld School. Also, the economic feasibility of alternative energy sources and conservation as discussed by affiant Craft lies beyond the scope of an NRC reactor licensing proceeding.

Similarly, the four affidavits submitted on behalf of CEPA contain only generalized allegations that the affiants' "health will be affected by radioactive emissions" from the plant and that "inadequate safety measures and the impossibility of emergency evacuation" exist. Moreover, each of the affiants improperly seeks to raise economic issues beyond the jurisdiction of the Board. The petitions of ECNP, Keystone Alliance and CEPA should therefore also be denied.

Of the 17 affiants filing on behalf of the petitions by FOE, only two are members. The other 15 affidavits must necessarily be disregarded. FOE indicates that affiant Anne S. McIndoo applied for membership in FOE after submitting her affidavit. Since she was not a member of FOE at the time the petition was submitted, her affidavit cannot validly support FOE's petition. The Licensing Board in the WPPSS proceeding expressly held that such an attempt to establish organizational standing retroactively by recruiting members after the deadline for filing petitions would not be allowed. The Board stated that the right of a petitioner to amend its petition under Section 2.714(a)(3) is not "an open invitation for an organization whose membership is far removed from the facility and who claimed out membership in the vicinity of the site to later try to recruit individuals in the vicinity

as members and gain a retroactive recognition of interest." ^{3/}

The same rationale was used by the Appeal Board in the Shearon Harris proceeding in rejecting intervention by an individual and organizational petitioner claiming "newly acquired standing":

It may be well that, as had been asserted, Mr. Eddleman has not long resided in the general vicinity of the Shearon Harris facility and that the Alliance is of recent origin. We agree with the Licensing Board, however, that this explanation for the tardy filing cannot carry the day. If newly acquired standing (or organizational existence) were sufficient of itself to justify permitting belated intervention, the necessary consequence would be that the parties to the proceeding would never be determined with certainty until the final curtain fell. Assuredly, no adjudicatory process could be conducted in an orderly and expeditious manner if subjected to such a handicap. ^{4/}

For the same reason, FOE cannot circumvent the requirements for standing by recruiting new members after the deadline

^{3/} Washington Public Power Supply System (WPPSS Nuclear Project No. 2), LBP-79-7, 9 NRC 330, 336 (1979).

^{4/} Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1-4), ALAB-526, 9 NRC 122, 124 (1979). See also Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), Docket No. 50-466, "Order" (November 20, 1979) (denying intervention on the basis of newly acquired residence in the vicinity).

for filing has passed. ^{5/} Accordingly, the FOE petition should also be denied.

3. National Lawyers Guild. The Board directed the Guild to file the same affidavits required of the organizations discussed above as well as the affidavits of prisoners at Graterford Correctional Institute and any individuals whose civil liberties allegedly have been or will be infringed by the grant of an operating license for Limerick.

The affidavits of individual Guild members submitted in response are insufficient to establish its standing for the reasons set forth in Applicant's Answer to the Guild petition. The use of form affidavits reflects the nonparticularized interests of these persons. The five affiants merely state the belief that Limerick "would pose a threat to my health and safety" and adds that each is concerned with "security and emergency planning." None of the affidavits even attempts to explain the basis for a legal interest in those matters or, as directed by this Board, "how those interests may be

^{5/} Applicant has also opposed the intervention of Robert L. Anthony, the FOE representative, in his individual capacity and opposes intervention by FOE on the basis of Mr. and Mrs. Anthony's allegations. However, if Mr. Anthony is permitted to intervene, his status as an intervenor will be sufficient to protect his personal interests and those of his wife, Elizabeth P.S. Anthony, the only other affiant who is a FOE member.

affected by the results of this proceeding." ^{6/} Such a vague, nonparticularized statement of interest does not even begin to meet the specificity requirements of 10 C.F.R. §2.714 or otherwise satisfy the requirements for standing in an NRC licensing proceeding. Further, adequate consideration has been given to the timely and proper evacuation of prisoners at Graterford. ^{7/}

The Guild also apparently argues that "surveillance" by the Applicant in some way gives it standing before the Nuclear Regulatory Commission. ^{8/} While it denies that it has acted improperly in any way, the Applicant notes that even if, contrary to fact, the Guild's charges had merit, they are irrelevant to any issue in this proceeding. ^{9/}

^{6/} Memorandum and Order at 8.

^{7/} See Limerick Emergency Plan, Appendix H, Section 4.1. Of course, Applicant maintains its position that the Guild lacks standing to represent any interest of third parties, such as prisoners at Graterford, under the Commission's rules and incorporated judicial concepts of standing. See Applicant's Answer to the Guild Petition at 8-9.

^{8/} As to allegations of excessive security measures, the Guild appears to have confused the reference to national security in 42 U.S.C. §2133(d) with the issue of plant security under 10 C.F.R. Part 73.

^{9/} See Public Service Company of Oklahoma (Black Fox Station, Units 1 and 2), LBP-78-26, 8 NRC 102, 168 (1978), aff'd, ALAB-573, 10 NRC 775, 783 n.31 (1979).

4. Del-AWARE Unlimited, Inc. Del-Aware relies upon the affidavits of Val Sigstedt and Colleen Wells. While the affiants labor mightily to embellish their alleged interest in the proceeding, the gist of their statement is that they believe unfavorable aesthetic impacts will result from the overall implementation of the Point Pleasant Diversion Plan for the supply of cooling water from the Delaware River. Of all interests which are clearly of a nonparticularized nature and shared by the general public so as to be insufficient for standing, surely aesthetics interests rank high. Also, many of the alleged interests are so tangential and speculative that they could not possibly furnish a basis for standing.^{10/} This petition should likewise be denied for the reasons expressed above.

5. John Shniper, Esq. and Charles Bruce Taylor. No supplementary information has been received from Mr. Taylor. His petition should therefore be denied. Supplementary allegations were filed by Mr. Shniper on October 12, 1981. Most of the allegations again express a generalized concern that routine radioactive emissions would contaminate the water and atmosphere in this area. For the reasons stated

^{10/} For example, it is unclear how the alleged existence of a spawning and nursery area for American shad in the intake area will affect either affiant. Also, it is entirely too speculative for the Board to consider whether the mere existence of certain water supply components for Limerick will effect so dramatic a change in the area as to cause actual economic harm to affiants' stained glass business. Certainly, there is no basis whatever for the claim that there will be any "leaching of toxic materials from Bradshaw Reservoir" or "dumping of polluted materials in the Perkiomen Creek."

in Applicant's Answer to the Shniper Petition, such non-particularized allegations of injury in fact, expressing concerns shared in general by the public at large, do not meet standing requirements under the judicial concepts of standing incorporated by the Commission into its rules and precedents. The same is true as to petitioner's generalized allegations relating to a possible nuclear incident and an alleged inability to decommission the Limerick plant.

6. Dr. William Lochstet. In response to the Board's inquiry as to its membership in ECNP, Dr. Lochstet states only that he does not "consider" himself to be a member. Whether or not he would otherwise be adequately represented by ECNP, ^{11/} Dr. Lochstet's allegations or sporadic visits in the Limerick area fall far short of the necessary showing for standing. Nor has Dr. Lochstet shown a serious attempt to meet the requirements for discretionary intervention under 10 C.F.R. §2.714(a)(1)(i)-(v). ^{12/}

^{11/} More than anything, Dr. Lochstet's reply calls into question whether ECNP is itself an organization with formal membership requirements such that it can obtain derivative standing on the basis of its members' interests. It appears that nonmembers subscribe to the ECNP newsletter and attend its meetings. It is not clear how one becomes a member or maintains membership in the organization, so as to give derivative standing to ECNP. See Houston Lighting and Power Company (Allens Creek Nuclear Generating Station, Unit 1), ALAB-535, 9 NRC 377, 390 (1979).

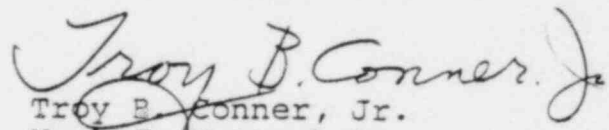
^{12/} See Memorandum and Order at 12.

7. Limerick Ecology Action. Four additional affidavits have been submitted. These likewise raise general questions of public health and safety as a result of routine or accidental radioactive releases from the facility without any particularized showing of harm to the affiants themselves. Some of the petitions also attempt improperly to raise the rights of third parties, ^{13/} contrary to the prohibition against such allegations under the decisions of the Commission. ^{14/}

Conclusions

For the reasons discussed more fully above, petitioners have failed to satisfy the requirements of the Board's Order of October 14, 1981 and have otherwise failed to meet the requirements for standing. Accordingly, each of the petitions should be denied.

Respectfully submitted,


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November 9, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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PHILADELPHIA ELECTRIC COMPANY) Docket Nos. 50-352
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CERTIFICATE OF SERVICE

I hereby certify that copies of "Applicant's Answer to Supplemental Petitions and Information Filed by Intervenor in Response to Licensing Board Order of October 14, 1981," dated November 9, 1981, in the captioned matter, have been served upon the following by deposit in the United States mail this 9th day of November, 1981.

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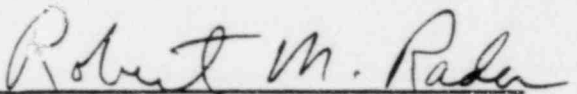
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