

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board 81 OCT 27 P2:51

In the Matter of)
)
Philadelphia Electric Company) Docket Nos. 50-352
) 50-353
(Limerick Generating Station,)
Units 1 and 2))

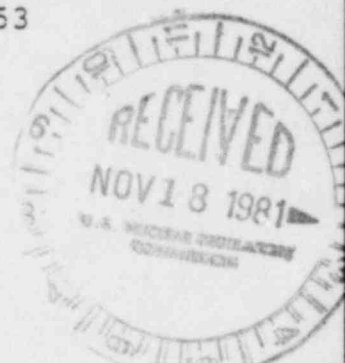
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APPLICANT'S RESPONSE TO LICENSING BOARD'S
INVITATION TO SUBMIT COMMENTS ON THE "ASPECTS"
REQUIREMENT FOR PETITIONS TO INTERVENE

Preliminary Statement

In its "Memorandum and Order Setting Schedule for Submission of Contentions and Other Preliminary Information," dated October 14, 1981, the Atomic Safety and Licensing Board ("Licensing Board" or "Board") reviewed, inter alia, the requirement in the Commission's regulations under 10 C.F.R. §2.714(a)(2) that "the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene" must be designated in the petition. The Board stated that its review of the prior and current versions of Section 2.714, the Commission's Statement of Considerations for the current version and the relevant case law did not, in its view, establish any clear purpose for the requirement.

The Board therefore concluded that it was inclined to hold "either as a matter of law or as a matter of practical application of the bifurcated schedule for filings under



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section 2.714, or both, there is no purpose served and therefore no requirement to consider 'aspects' (in addition to interests and how they may be affected) in advance of and separate from contentions when dealing with a timely petition to intervene as of right."^{1/} The Board invited the Applicant, Staff, and petitioners to submit their comments on the Board's preliminary view by October 26, 1981. Applicant submits the following discussion in response to the Board's invitation.

For the reasons discussed below, Applicant is of the view that the "aspects" requirement of the regulations is integral to the other provisions of Section 2.714(a)(2) by which petitioner must demonstrate "injury in fact" sufficient for standing and is also a limitation upon the scope of admitted contentions. The necessity for designation of specific "aspects" further serves to give the Staff, Applicant, and other parties formal notice as to the extent of petitioner's desired participation. Therefore, as discussed below, the "aspects" requirement should be applied to each petition in the instant proceeding in accordance with these purposes.

Argument

Any attempt to understand the rationale for the "aspects" requirement must be premised on the oft-cited legal maxim that every part of a statute or regulation is deemed to have some purpose. As stated by Professor Sutherland:

^{1/} Slip opinion at 13-14.

"It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute." A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error. 2/

Numerous courts have concurred in this principle. For example, the United Court of Appeals for the District of Columbia Circuit likewise approved "the general proposition that a statute should not be construed in such a way as to render certain provisions superfluous or insignificant." 3/

A related rule of construction is that language is to be given its plain meaning wherever possible. As the Supreme Court stated in Caminetti v. United States, 242 U.S. 470, 485-86 (1917):

Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion. . . . There is no ambiguity in the terms of this act. . . .

Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, and with the meaning commonly attributed to them.

2/ 2A Sutherland Statutory Construction §46.06 (3d rev. ed. 1973), citing State v. Bartley, 39 Neb. 353, 58 N.W. 172 (1893) (footnote omitted).

3/ Ziegler Coal Co. v. Kleppe, 536 F.2d 398, 406 (D.C. Cir. 1976).

Noting an earlier decision, the Court likewise stated in United States v. Menasche, 348 U.S. 528, 538-39 (1955), as follows:

It is our duty "to give effect, if possible, to every clause and word of a statute," Montclair v. Ramsdell, 107 U.S. 147, 152, rather than to emasculate an entire section

While the Board herein has indicated its inclination not to consider "aspects" in advance of contentions, it is submitted that the Commission's enactment of the "aspects" provision among the requirements for a petitioner's demonstration of standing to intervene^{4/} strongly implies that the designation of "aspects" is integrally related to standing. Just as it is a fundamental axiom of construction that related statutes must be construed in pari materia,^{5/} the same principle requires, under the doctrine of "associated words" (noscitur a sociis), that related sentences be construed together. As Professor Sutherland states:

^{4/} Thus, under 10 C.F.R. §2.714(a)(2) and subparagraph (d) which it incorporates by reference, the petitioner must set forth with particularity his interest in the proceeding and how that interest may be affected by the results of the proceeding. This is the crucial information needed by the Board in order to determine whether the petitioner has shown the requisite interest for standing and intervention as a matter of right in a licensing proceeding such as this.

^{5/} As to this, Professor Sutherland states:

Statutes are said to be in in pari materia - to pertain to the same subject matter - when they relate to the same person or thing, or have the same purpose or object.

If the legislative intent or general meaning of a statute is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases.

.....

The principle of *noscitur a sociis* applies to sections and sentences in a manner similar to the application of the doctrine of *in pari materia* to statutes covering the same subject matter. 6/

Accordingly, since the "aspects" requirement is included within the provisions for demonstrating injury in fact and standing, it is reasonable to infer that this requirement bears upon these matters as well.

As Applicant has stated in its answers to the numerous petitions to intervene filed in this proceeding, it is our view that the Commissioners have expressly limited standing in NRC licensing proceedings to those individuals and groups which can demonstrate standing under current judicial concepts. As a corollary, participation in the proceeding is limited to matters which petitioner has demonstrated his standing to litigate. The designation of specific "aspects" therefore assures a direct correlation between the specific areas petitioner wishes to litigate and the legal interest, i.e., "injury in fact," which gives rise to his standing. Correspondingly, this designation further ensures that, once standing has been

6/ 2A Sutherland Statutory Construction §47.16 (3d rev. ed. 1973).

determined, a petitioner's admitted contentions will likewise correlate to such "injury in fact."^{7/}

The "aspects" requirement also serves the important function of giving notice to the Staff, Applicant and other parties as to the areas which each petitioner intends to pursue. Regardless of the aspects which any given petitioner may choose to pursue, the fact remains that petitioners frequently focus on particular subjects of special interest to them. It is important for at least the Applicant to know at the outset which areas the petitioner intends to litigate in order that it may determine whether or in which respects it will oppose intervention. While this purpose is not set forth in the rule's Statement of Considerations, it may be presumed by hypothecation that the Commission, in requiring petitions to contain designated "aspects" upon filing, intended to afford such notice.

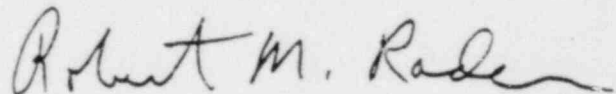
^{7/} For example, a petitioner who resides 35 miles from the facility lacks standing as a matter of law to litigate the adequacy of plans for evacuating the plume exposure EPZ because he lacks any possible "injury in fact." An abstract interest in such matters is clearly insufficient for standing to litigate such a contention. See, e.g., Westinghouse Electrical Corp. (Export to South Korea), CLI-80-30, 12 NRC 253, 258 (1980).

Conclusion

For the reasons discussed above, the "aspects" requirement should be applied to all petitions in the instant proceeding in conjunction with the other provisions of 10 C.F.R. §2.714(a)(2) in order to stake out the limits of admissible contentions for demonstrating standing and for the purpose of affording the parties adequate notice of the matters each petitioner intends to pursue.

Respectfully submitted,

CONNER & WETTERHAHN

A handwritten signature in cursive script, appearing to read "Robert M. Rader".

Troy B. Conner, Jr.
Mark J. Wetterhahn
Robert M. Rader

October 26, 1981

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

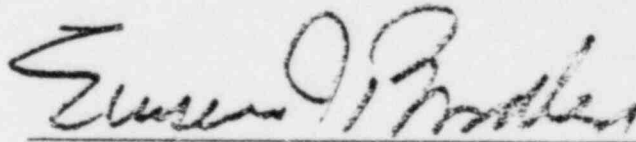
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NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance on behalf of the Applicant in the captioned matter. In accordance with §2.713, 10 C.F.R. Part 2, the following information is provided:

Name	-	Eugene J. Bradley
Address	-	Philadelphia Electric Company 2301 Market Street Philadelphia, Pennsylvania 19101
Telephone Number	-	215/841-4251
Admission	-	Supreme Court of Pennsylvania United States Court of Appeals District of Columbia Circuit
Name of Party	-	Philadelphia Electric Company

Notice is further given pursuant to §2.708, 10 C.F.R. Part 2, that, in addition to Troy B. Conner, Jr., Esq., service upon the Applicant should be made upon the undersigned.


Eugene J. Bradley

Dated at Philadelphia, Pennsylvania,
this 23rd day of October, 1981.

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CERTIFICATE OF SERVICE

I hereby certify that copies of (1) "Applicant's Response to Licensing Board's Invitation to Submit Comments on the 'Aspects' Requirement for Petitions to Intervene," dated October 26, 1981 and (2) "Notice of Appearance of Eugene J. Bradley," dated October 23, 1981, in the captioned matter, have been served upon the following by deposit in the United States mail this 26th day of October, 1981:

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Washington, D.C. 20555

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Judge Richard F. Cole
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Washington, D.C. 20555

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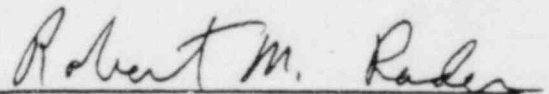
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